



February 20, 2018

Dear Interested Citizen:

This is to announce the availability and public comment period beginning **Tuesday, February 20, 2018 and ending Wednesday, March 21, 2018** for the Environmental Assessment (EA) that will be used by the National Park Service to fulfill federal requirements under Section 6(f)(3) of the Land and Water Conservation Fund Act of 1965, as amended (LWCFA); Public Law 88-578; 54 U.S.C. § 2003 *et seq.* to evaluate the environmental impacts associated with replacement sites for the partial conversion of DeReef Park, formally known as Radcliffeborough Park, located on the Charleston Peninsula, on the north side of Morris Street, approximately 100 feet west of the intersection of Morris Street and Jasper Street in downtown Charleston, South Carolina. On July 20, 2016, the City of Charleston (City), through the State of South Carolina (State), received approval from the National Park Service (NPS) for the partial conversion with delayed parkland replacement of DeReef Park. The replacement of the converted parkland with other properties is being done in accordance with federal regulation 36 CFR 59.3.

DeReef Park benefitted from two LWCFA grants subgranted to the City by the State. In accepting the federal grants, the City agreed to maintain in perpetuity the entire DeReef Park for public outdoor recreation. NPS must approve any request to convert LWCFA funded land to a non-recreation use. Such requests must be forwarded to NPS by the State on behalf of the subgrantee, the City. NPS approved the partial conversion of DeReef Park on July 20, 2016.

A decision by the NPS is now required on the proposed replacement sites to account for the portion of DeReef Park converted to non-recreation use. NPS will review the proposal to ensure it meets the conversion replacement site criteria presented in federal regulations at 36 CFR 59.3, including environmental information in compliance with the NEPA, prior to making a decision on the conversion request.

**You can review and comment on the City's proposal and EA in the following ways:**

1. Copies of the EA along with instructions on how to comment have been placed in the following public locations:

City of Charleston Municipal Building  
Customer Service Desk, Permit Center, 1st Floor  
2 George Street  
Charleston, SC 29401

Charleston County Public Library  
Reference Desk  
68 Calhoun Street  
Charleston, SC 29401

City of Charleston Legal Department  
50 Broad Street, 1st Floor  
Charleston, SC 29401

2. You can find a copy of the EA with instructions on the Internet. Go to [www.charleston-sc.gov/DeReefParkEA/replacementsites](http://www.charleston-sc.gov/DeReefParkEA/replacementsites). The EA with instructions also will be listed in the drop down box on the Community tab which appears on the first page of the City of Charleston's website, [www.charleston-sc.gov](http://www.charleston-sc.gov). The site will provide instructions on how to review and comment.

3. A limited number of compact disks (CDs) are available containing the entire environmental assessment. To request a CD, write or telephone your request to:

City of Charleston Legal Department  
50 Broad Street, 2<sup>nd</sup> Floor  
Charleston, SC 29401  
843.724.3730

We encourage you to review and comment on the EA as soon as possible. **ALL WRITTEN PUBLIC COMMENTS SENT VIA THE INTERNET, OVERNIGHT OR REGULAR MAIL WILL BE ACCEPTED IF RECEIVED BY 5 P.M. ON WEDNESDAY, MARCH 21, 2018.**

Send all overnight and regular mail correspondence to:

City of Charleston Legal Department  
50 Broad Street, 2<sup>nd</sup> Floor  
Charleston, SC 29401

Include your name and return address in the body of all your messages. Your comments along with your name and address will be made available for public review. However,

individual respondents may request that we withhold their names and addresses from the public record. We will honor such requests to the extent allowable by law. If you wish to withhold your name and/or address, you must state that request prominently at the beginning of your comment. Anonymous comments will not be considered.

If you have any questions, please contact Frances Cantwell or Susan Herdina at 843.724.3730.

Thank you for your interest in this project.

Sincerely,

City of Charleston

NATIONAL ENVIRONMENTAL POLICY ACT  
ENVIRONMENTAL ASSESSMENT  
OF  
LWCF CONVERSION REPLACEMENT SITES FOR  
DEREEF PARK, CHARLESTON, SOUTH CAROLINA  
February 2018

A proposal for the replacement sites for the partial conversion of DeReef Park under Section 6(f)(3) of the Land and Water Conservation Fund Act of 1965, as amended; Public Law 88-578; 54 U.S.C. § 2003 *et seq.*

For Information Contact:  
City of Charleston  
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(843) 724-3730

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Columbia, South Carolina 29201

For:  
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Southeast Regional Office  
100 Alabama Street, SW  
Atlanta, Georgia 30303

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## **CHAPTER 1 –PURPOSE, NEED AND BACKGROUND**

### **Purpose for Action**

The City of Charleston, South Carolina (City), through the State of South Carolina Department of Parks, Recreation and Tourism (State), is seeking the National Park Service's (NPS) approval, of replacement property necessitated by the partial conversion of DeReef Park, in satisfaction of the Land and Water Conservation Fund Act (LWCFA) Section 6(f)(3) (now codified at 54 U.S.C. § 200305(f)(3)) and conversion process requirements for delayed replacement at 36 C.F.R. § 59.3(c). On July 20, 2016, the City, through the State, received approval from the NPS for the partial conversion with delayed parkland replacement of DeReef Park, formerly known as Radcliffeborough Park, located on Morris Street in downtown Charleston, South Carolina. The City committed to satisfy Section 6(f) (3) substitution requirements within a specified period, normally not to exceed one year.

The purpose of this Environmental Assessment (EA) is to assess the impacts on any significant resources and identify issues associated with the three proposed properties to replace the LWCFA Section 6(f) (3) property and recreational usefulness lost at DeReef Park due to the partial conversion. Per 54 U.S.C. § 200305(f) (3), replacement properties must be of reasonably equivalent recreational usefulness and location as compared to the property converted. Though preferred, replacement properties need not be located at or near the location of the partial conversion (36 C.F.R. § 59.3(b) (3)).

### **Need for Action**

The need for the NPS approval is required by the LWCFA of 1965 (54 U.S.C. § 200305), which is further outlined through the Land and Water Conservation Fund Program of Assistance to States, Post-Completion Compliance Responsibilities (LWCFA conversion regulations) at 36 C.F.R. § 59.3 (see Appendix Item #1) and the LWCF State Assistance Program Federal Financial Assistance Manual of October 1, 2008 (LWCFA Manual), Chapter 8.E.11, addresses LWCFA conversions with delayed parkland replacement.

Pursuant to the National Environmental Policy Act (NEPA) of 1969, P.L. 91-190, 42 U.S.C. § 4321 *et seq.*, this EA is required to help the NPS evaluate the potential environmental impacts on significant resources and issues posed by the City securing and improving the proposed three properties for outdoor recreation purposes to satisfy replacement requirements for the partial conversion of DeReef Park including whether the proposed replacement properties, as improved, will be of reasonably equivalent recreational usefulness compared to the property converted at DeReef Park (the Proposed Action Alternative described in Chapter 2). This EA will also provide the interested and affected public an opportunity to review and comment on the proposed action.

### **Background**

DeReef Park is a walk-to neighborhood park in Charleston, South Carolina, located on the Peninsula, on the north side of Morris Street, approximately 100 feet west of the intersection of Morris Street and Jasper Street in the Radcliffeborough section of the City. The Park, as originally configured, contained 1.3 acres and included amenities that included a lawn for catch or Frisbee, play equipment, shade trees, picnic and game tables, a drinking fountain and some off-street parking spaces. Also in the Park is a relocated structure, known as the Praise House which is a contributing resource to the expansion of the Charleston Old and Historic District, a historic district eligible for listing on the National Register of Historic Places.

The NPS administers the LWCFA, a matching grant program with States, and through States, to local units of government. Two LWCFA grants were awarded to the State, which in turn awarded (or sub-granted), the funds to the City to benefit DeReef Park. The acceptance of the funds established a federal LWCFA Section 6(f) (3) protection on DeReef Park to maintain the area for public outdoor recreation purposes in perpetuity. Should the City or State decide to use the area for something other than public outdoor recreation, it would be necessary to submit to the NPS a conversion request for approval to remove the LWCFA Section 6(f)(3) public outdoor recreation protection from the property.

On January 17, 2008, the City conveyed DeReef Park Section 6(f)(3) park property to a private party for a project involving a planned unit infill development (Infill Project) that would permanently occupy a portion of Section 6(f)(3) restricted DeReef Park. This conveyance occurred before the State submitted a conversion request to NPS. On November 11, 2008, the NPS approved the State's request for conversion approval for the entire DeReef Park to be replaced by another site in the City. On December 2, 2008, the NPS and the City executed and recorded in the Register of Mesne Conveyance Office for Charleston County, a "Simultaneous Release and Declaration of Restrictive Covenants" that removed the public outdoor recreation protection from DeReef Park.

A lawsuit challenging the conversion was filed in the United States District Court, Charleston Division, on December 11, 2013. On December 9, 2014, the Court granted NPS' motion for a voluntary remand and ordered NPS to reconsider the original conversion process and decision, to include compliance with NEPA and the National Historic Preservation Act (NHPA). NPS, in partnership with the State and City, undertook a new conversion process. On June 30, 2016, the State, on behalf of the City, submitted a conversion request, including an EA pursuant to NEPA, to the NPS for the removal of the LWCFA Section 6(f)(3) protection from a portion of DeReef Park. The NPS approved the request for partial conversion, with the commitment of the State and the City to secure replacement property or properties under the "delayed replacement" provision of the LWCFA conversion regulations at 36 C.F.R. § 59.3(c). On July 20, 2016, the NPS issued a Finding of No Significant Impact (FONSI) and a LWCFA grant amendment approving the partial conversion with delayed replacement (see Appendix, Item # 2). The approval removed Section 6(f)(3) protection from 0.954+/- acres of DeReef Park, maintained Section 6(f)(3) protection on the remaining 0.346+/- acre section of DeReef Park, and allowed replacement property to be secured within one year thereafter pursuant to the LWCFA conversion regulation.

The litigation contesting the conversion remained pending until May 24, 2017, when a settlement agreement was approved and a consent order dismissing the action was entered in the United States District Court, Charleston Division. From the time of the issuance of the FONSI in July, 2016 until the case was dismissed in May 2017, a question remained as to whether the partial conversion with delayed replacement would be challenged. This circumstance contributed to the delayed replacement not being timely accomplished. A further significant factor that affected the timeliness of identifying a replacement park was the discovery of an access issue with a proposed replacement park that had been under consideration for nearly a year. In July, 2017, at the request of the City, the State secured from the NPS an extension of one year to identify the replacement parks.

More information and background about the City's decision to use a portion of DeReef Park for private purposes and the NPS approval to remove LWCFA Section 6(f) (3) restrictions from a portion of DeReef Park can be found in the EA, Appendix, Item # 3. An electronic version of the EA, to include its Appendix, and the Finding of No Significant Impact may be viewed at [www.charleston-sc.gov](http://www.charleston-sc.gov) under the Community folder.

### **Requirements for LWCFA 6(f) (3) Conversion with Delayed Parkland Replacement**

The LWCFA Section 6(f) (3) states: "No property acquired or developed with assistance under this section shall, without the approval of the Secretary (delegated to the National Park Service) be converted to other than public outdoor recreation uses." An LWCFA conversion process is triggered when a private and/or non-recreation use permanently occurs on Section 6(f) (3) protected property. The requirements for the LWCFA conversion process are covered in the LWCFA conversion regulations at 36 C.F.R. § 59.3 (see Appendix, Item #1). This EA is focused on the replacement property or properties to complete the DeReef conversion process. As such, the following requirements that must be met for federal approval, specifically apply to the replacement proposal.

**1. Fair market value:** The fair market value of the property to be converted has been established and the property proposed for substitution (can consist of more than one site) is of at least equal fair market value as established by an approved appraisal. *This is an administrative determination and not subject to environmental review.*

**2. Recreation Usefulness and Location:** The property proposed for replacement is of reasonably equivalent usefulness and location as that being converted. Dependent upon the situation and at the discretion of the NPS Regional Director, the replacement property need not provide identical recreation experiences or be located at the same site, provided it is in a reasonably equivalent location. Generally, the replacement property should be administered by the same political jurisdiction as the converted property. Property to be converted must be evaluated in order to determine what recreation needs are being fulfilled by the facilities which exist and the types of outdoor recreation resources and opportunities available. The property being proposed for substitution must then be evaluated in a similar manner to determine if it will meet recreation needs which are at least alike in magnitude and impact to the user community as the converted site. Replacement property need not necessarily be directly adjacent to or close by the converted site. *Recreational usefulness and location will be discussed and evaluated in this EA.*

**3. Replacement Property Eligibility:** The LWCFA conversion process regulations applicable to the eligibility of the replacement property for the DeReef Park conversion require the following:

- Land currently in public ownership may not be used as replacement land for land acquired as part of an LWCFA project. *In this case, the process for securing replacement properties is governed by the U.S. District Court's order to the NPS to reconsider its original conversion process that led to the total conversion of DeReef Park. Not only was the removal of the Section 6(f) (3) protection at DeReef Park reconsidered, but also reconsidered was any replacement site that would have been eligible for a conversion replacement as of January 17, 2008, the date DeReef Park was taken out of public ownership and conveyed to a private party. Consequently, any property that was not acquired, dedicated, and/or managed for public outdoor recreational purposes by the City prior to January 17, 2008, is considered eligible replacement as such property would have been available for DeReef Park replacement at the time the original conversion occurred.*

- The property proposed for substitution meets the eligibility requirements for LWCFA assisted acquisition. *The properties proposed for replacement would have been eligible for LWCFA grant assistance on January 17, 2008, which is the date DeReef Park was taken out of public ownership and conveyed to a private party.*



- The replacement property must constitute or be part of a viable recreation area. The State and City agree to improve the properties proposed for substitution to meet this requirement.

**4. Delayed Replacement:** The LWCFA conversion process regulations allow for delayed replacement of property at 36 C.F.R. § 59.3(c) when it is not possible for replacement property to be identified prior to the State's request for a conversion. In such cases, an express commitment to satisfy Section 6(f) (3) substitution requirements within a specified period, normally not to exceed one year following NPS conversion approval, must be received from the State. This commitment will be in the form of a conversion amendment to the grant agreement.

In granting the motion of the NPS for a voluntary remand and reconsideration of its first decision to approve the conversion of DeReef Park, the Court ordered the conversion process to be undertaken and completed by April 30, 2015. This schedule for undertaking and completing the conversion, to include an evaluation under Section 106 of the NHPA, was ambitious, and rendered the simultaneous identification and evaluation of replacement park sites unfeasible and impractical, if not impossible, if the reconsideration of the initial conversion was to be thoroughly vetted. NPS advised the State and its sub-grantee, the City, to use the option at 36 C.F.R. § 59.3(c) that allows delayed replacement. This course of action provided the NPS, the State and the City the time needed to focus on the effects of the partial conversion of DeReef Park, to provide for a meaningful public comment period and to secure an appraisal of the converted area that conformed to the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA). The delayed replacement course of action also assured that the NPS, the State and the City would have adequate time to identify and evaluate reasonable replacement properties that meet the recreational needs of the City, and to prepare and complete the LWCFA conversion process for those properties, including this EA and the requisite appraisals.

The State and its sub-grantee, the City, completed the process to convert a portion of DeReef Park when the NPS approved the conversion amendment on July 20, 2016, that included delayed replacement. As mentioned earlier, at the request of the City, the State secured from the NPS a one year extension to identify the replacement parks. This EA focuses on the proposed replacement sites.

**5. Timeframe for replacement site improvement:** The replacement sites must be improved and available for public use to replace the recreation usefulness lost at DeReef Park within three years of NPS approval of the replacement site proposal per the LWCFA Manual, Chapter 8.E.3.d. Of the replacement sites being proposed, outdoor recreational use is now occurring at Simonton Park. Modest upgrades are required at the other two proposed replacement sites - Gateway Park and 64 and 66 DeReef Court - and will be completed within the next three years.

## CHAPTER 2 - DESCRIPTION OF ALTERNATIVES

This chapter presents the range of alternatives available to the NPS for consideration: 1) a "no action" alternative, where no proposal is submitted to NPS for review so there would be no federal action; and 2) a "proposed action" alternative where NPS receives, reviews, and approves a proposal request.

**No Action Alternative:** The No Action Alternative is the NPS does not receive a proposal from the State, on behalf of the City, to secure replacement property for that lost by the partial conversion of DeReef Park pursuant to the LWCFA conversion regulations at 36 C.F.R. § 59.3, even though DeReef Park has been conveyed to a private interest for non-public and non-outdoor recreation purposes.

**Proposed Action Alternative:** The Proposed Action Alternative is the NPS receipt of a request for approval of replacement property subject to the provisions of LWCFA to replace the loss of property and recreational utility at DeReef Park due to the partial conversion pursuant to the federal LWCF conversion regulations at 36 C.F.R. § 59.3. The following section provides a detailed description of the Proposed Action Alternative.

The City has identified three sites to serve as replacement properties for the property lost as a result of the partial conversion:

- 1) Simonton Park, a 0.278+/- acre parcel located on Morris Street across from DeReef Park;
- 2) A new park, referred to as Gateway Park, a one acre tract of land on US Highway 17, at the southern entrance of the T. Allen Legare Bridge into the Peninsula; and
- 3) 64 and 66 DeReef Court, two lots comprising .08 +/- acres located on west side of DeReef Court, approximately sixty-five feet from DeReef Park.

All sites are located in, and operated by, the City of Charleston. Simonton Park and 64 and 66 DeReef Court serve the same neighborhoods as DeReef Park. Gateway Park is located approximately 1.63 miles from DeReef Park by foot or bike and 2.01 miles by car. All of the parks qualify as neighborhood parks in the City's park matrix system, which means they are intended to serve persons living within a half-mile radius of the park. The location of Gateway Park at the foot of the T. Allen Legare Bridge will also serve as a point of connection from the West Ashley area of the City to the Peninsula for bicycle and pedestrians commuting to and from work or pursuing leisure pursuits. A publicly accessible bike/pedestrian path provides a connection from Gateway Park to Albermarle Road which leads to an 8.25 mile linear greenway that essentially runs parallel to U.S. Highway 17.

### **Simonton Park:**

The City acquired title to Simonton Park by deed dated November 15, 2007, later corrected by deed dated January 22, 2008. Prior to taking title, the City requested and received a retroactive waiver from the NPS to acquire the site as a potential replacement park for what was being converted at the original DeReef Park. After further consultation between the City and the State, the decision was made not to proceed with the selection of Simonton Park as potential replacement property at that time. However, due to the reconsideration of the original conversion process, Simonton Park is once again proposed as a replacement site.

Prior to its acquisition by the City, the vacant site used to create Simonton Park was owned by the developer of the Infill Project. Prior to its acquisition by the developer, the site was owned by a private party and was leased to a nearby private school as a play/physical education area. Historically, the park site was part of a larger tract of land that housed Simonton School, the first public African American school in the City. The school was demolished years before the City acquired title to the Park.

Simonton Park is located between two streets (Morris Street and Marion Street) and flanked by multi-story residential buildings on both sides. This walk-to park is diagonally across the street from the reconfigured DeReef Park, so it serves the same residential communities within a half-mile radius, including the Radcliffeborough and Cannonborough/Elliotborough neighborhoods. Simonton Park is 0.278+/- acres and has hardscape pedestrian paths, seating walls, benches, plant borders, trees and interior lawn space. Recently, the Park underwent beautification efforts to address damage caused by Hurricane Matthew, which brushed the City on October 8, 2016, causing a number of trees lining the lawn to fall.

To address the damages caused to the Park by the hurricane, the City replaced all trees that lined the lawn area of the Park with saucer magnolias. A garden area surrounded by crushed paths and benches are new features that were added in the center of the lawn. A sign identifying the Park will be installed on Marion Street, to compliment the one now existing on Morris Street. No other additional structures are anticipated. Attached is a concept site plan depicting the Park's configuration and improvements (see Appendix, Item # 4).

As it has in the past, Simonton Park will continue to provide for leisurely outdoor recreation such as picnicking, relaxing in the sun and shade, or reading on one of the benches. The lawn area is of sufficient size to accommodate a game of catch or Frisbee between two people, or perhaps an individual practicing soccer drills to improve footwork and ball control. The pathways are available to those wanting to stretch their legs either strolling alone or with others and for enjoying the formal garden and identifying pollinators.

Attached is a location map and proposed LWCFCA Section 6(f) (3) map for Simonton Park (see Appendix, Item #4).

#### **Gateway Park (New Park):**

As part of the development of an apartment complex, the portion of the site that is now referred to as Gateway Park was set aside to serve as a public park by agreement between the City and the developer. The City's acceptance of the park agreement was conditioned on any environmental issues being remediated to allow the site to be used as a park. Additional conditions included grading, hydro-seeding, and irrigating the site. The City accepted a deed to Gateway Park in December, 2016.

Prior to its acquisition by the City, Gateway Park was part of a larger tract of land that had been purchased by an apartment complex developer. Prior to that time, a towing company occupied the site.

Gateway Park is south of the intersection of US Highway 17 and the elevated Fielding Connector, and sits at the foot of the T. Allen Legare Bridge, a bridge providing access to the Peninsula from the West Ashley area of the City by those using US Highways 17 (Savannah Highway), 61 (St. Andrews Boulevard) and 171 (Folly Road). Gateway Park can be accessed from the DeReef Park

neighborhood by car. Bicycle and pedestrian access is also available, but requires traversing a bridge that has a sidewalk, but no dedicated bike lane.

The Park will be developed to include an exercise trail, lawn, rest shelter and on-site parking. The majority of the Park will be a lawn where catch, Frisbee, picnicking or reading can be accommodated. The Park also offers views of the Ashley River looking toward the east. The Park is intended to serve as a node on the City's network of dedicated bicycle and pedestrian trails, being the transition point from the West Ashley Greenway to a future trail across the Ashley River either by way of the Legare Bridge or a new pedestrian/bicycle bridge. In the interim, it will serve as a terminal node, providing a destination for fitness-minded users. The small parking area will allow users that do not live within walking distance convenient access to the Park facilities.

Attached are a location map and proposed LWCFA Section 6(f) (3) map and a conceptual site plan for Gateway Park (see Appendix, Item # 5).

#### **64 and 66 DeReef Court (New Park):**

The properties at 64 and 66 DeReef Court were acquired by the City in June, 2017. Previously, these parcels were owned by the developer of a private infill project and were programmed for residential homes. These parcels are on the west side of DeReef Court, within 65 feet of DeReef Park. The park to be constructed here is intended to serve as a quiet respite and a continuation of green space from DeReef Park to the western edge of the development at DeReef Court. Sodding and landscaping will provide a softening element to the surrounding urban development. Seating will accommodate reading, resting and people watching. A soft path through the park will provide a connection to and through other City-owned property to the sidewalk on Smith Street.

Attached are a location map and proposed LWCFA Section 6(f) (3) map and a conceptual site plan for these properties (see Appendix, Item # 6).

**Recreation Usefulness:** The area removed from Section 6(f) (3) restriction at DeReef Park totaled 0.954+/- acres. Prior to DeReef Park being partially converted, it provided walkways, a playground area, an open lawn with shade trees, a drinking fountain, benches, picnic and game tables, play equipment, a play-spray feature, a small building of historic significance and off-street parking. The open grassed area of DeReef Park was the most affected by the partial conversion.

The three proposed replacement sites will be of similar recreational utility as DeReef Park as they will provide the following outdoor recreation resources, amenities and recreational uses/opportunities when improved:

**Simonton Park:** Like DeReef Park, Simonton Park includes a grassed lawn for catch or Frisbee and has shade trees and ample shaded seating. Ornamental plantings embellish this Park, and as was the case at DeReef Park, Simonton Park is in compliance with the American's with Disabilities Act (ADA) regulations.

**Gateway Park:** This Park provides a connection to the existing West Ashley Greenway linear park and the planned connection to the peninsula by either a shared use path across the Legare Bridge or a new bicycle/pedestrian bridge. Gateway Park will include a multi-use path that will provide circulation within and through the park space and to fit-trail equipment stations. Like DeReef Park, Gateway Park will have an open lawn suitable for catch, Frisbee and small pick-up

games, seating and a small parking area for park users who do not live within walking distance.

The Park will offer views of the Ashley River and will be ADA compliant.

64 and 66 DeReef Park: This Park will complement DeReef Park. It will have seating, a rest area, and tree shade.

## CHAPTER 3 - AFFECTED ENVIRONMENT

This chapter describes the existing condition of any significant resources and issues associated with each replacement site and if they could be impacted by implementing either of the two alternatives described in Chapter 2. The affected environment descriptions serve as the baseline for predicting impacts to resources that could occur if any of the alternatives under consideration (including no action) are implemented. Note that because the private, non-recreation use of a portion of DeReef Park began in January 17, 2008, this date is the time the conversion occurred, so the following baseline description of affected resources reflects the conditions of each site as of January 17, 2008.

An assessment of the proposed replacement sites to determine significant resources and issues at the time of the conversion that may likely have been impacted by the partial conversion was done by S&ME, an environmental engineering firm. That assessment indicated the following resources and issues for the potential to be impacted most by either of the two alternatives:

### **Park and Outdoor Recreation Resource Usefulness and Opportunities**

Simonton Park is a walk-to park diagonally across the street from the reconfigured DeReef Park and thus serves the same residential communities within a half-mile radius, including the Radcliffeborough and Cannonborough/Elliottborough neighborhoods. Simonton Park is accessible from Morris Street, Marion Street and Simonton Mews, and is ADA compliant. The Park provides opportunities for reading, sitting, picnicking and ball or Frisbee tossing.

Gateway Park is approximately 1.63 miles from DeReef Park. The Park is programmed as a neighborhood park, designed to serve those living within a half mile of its radius. Gateway Park is accessible from Folly Road and Albermarle Drive and will be ADA compliant. The Park will also serve as the eastern terminus of the West Ashley Greenway, an 8.25 mile linear greenway that runs in a southerly direction parallel to Highway 17. Gateway Park will offer a grassed lawn for catch, Frisbee and small pick-up games, views of the Ashley River, shared use path circulation with fit-trail stations, a rest stop for bicyclists and pedestrians, shade trees, and on-site parking.

64 and 66 DeReef Court are approximately 65 feet from the reconfigured DeReef Park. The Park will be a walk-to neighborhood park and will serve the same residential communities within a half-mile radius, including the Radcliffeborough and Cannonborough/Elliottborough neighborhoods. 64 and 66 DeReef Court are accessible from DeReef Court and also from Smith Street, by way of a path from Smith Street across other City-owned property. The Park will be ADA compliant. This Park will provide opportunities for sitting, reading and people watching.

### **Socioeconomics**

Simonton Park and 64 and 66 DeReef Court: The 2010 Census data reveals that 8,759 people live within a half mile of these Parks, 32.2% of whom are African American. The majority of the population (68.8%) was between the ages of 18 and 34. Of the 3,308 occupied housing units within a half mile of the Park, 23.8% were owner-occupied and 76.2 % were rentals. Non-family households accounted for 74.7% of all households. Median household income of \$ 23,738.00 was lower than the overall City median household income of \$ 48,409.00 (see Appendix, Item # 7).

Gateway Park: The 2010 Census data reveals that 3,160 people live within a half mile of the Park. Ninety-seven percent of that population is white and the majority of the population (65%) falls between the ages of 18 and 64. Of the 1498 housing units within a half mile of the Park,

70.6% were owner-occupied and 29.4 % were rentals. Non-family households accounted for 48.1% of all households. The area median household income was \$ 74,006.00, compared the overall City-wide median household income of \$ 48,409.00 (see Appendix, Item # 8).

#### **Minority and low-income populations**

Simonton Park and 64 and 66 DeReef Court: According to the 2010 Census data, just under a third (32.2%) of the population living within a half mile of these parks were African American. The median household income in this area lagged behind the median household income citywide (\$23, 738.00 compared to \$ 48,409.00) (see Appendix, Item # 7).

Gateway Park: According to the 2010 Census data, the vast majority of those living within one half mile of the park (97%) were white. The median household income exceeded that on the median household income citywide. (\$ 74,006.00 as compared to \$48,409.00) (See Appendix, Item # 8).

### **Resources Considered but Dismissed After Consultation**

#### **Historic Resources**

The City initiated NHPA Section 106 consultation, on behalf of NPS, and received a no adverse effect letters for Simonton Park, Gateway Park, and 64 and 66 DeReef Court.

It should be noted that Simonton Park was part of a larger tract of land where the first African American public school in the City was located. The school was demolished decades ago. The park was vacant when acquired by the infill developer and when acquired by the City. Any historic resources on the site have long since been removed, as the City urbanized.

Gateway Park was part of a larger approximately three (3) acre tract of land that for years served as the site of a towing company, bulk fuel storage facility and automobile service station. The tract was acquired by an apartment complex developer. The developer razed remaining towing company structures to make way for the apartment complex and the park. Any historic resources on the site have long since been removed, as the City urbanized.

64 and 66 DeReef Court are vacant lots, and have been so for a number of years. Any historic resources on these lots have long since been removed, as this area of the City urbanized.

#### **Threatened/Endangered Species**

The United States Fish and Wildlife Service (USFWS) has concurred with the City that there are no known occurrences of threatened or endangered species in the area of Simonton Park, Gateway Park or 64 and 66 DeReef Court (see Appendix, Item # 9).

### **Environmental Resource Topics Dismissed After Consideration**

#### **Floodplains/wetlands**

Effects to these resources were considered for each of the three Parks but dismissed because the USFWS National Wetland Inventory (NWI) map does not indicate the presence of previously documented wetlands in or adjacent to Simonton Park and 64 and 66 DeReef Court. For Gateway Park, a letter from the USACE dated October 30, 2012 documents USACE's determination that no jurisdictional wetlands are present.

The Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Map (FIRM) indicates that Simonton Park is in floodzone AE (an area subject to inundation by the one-percent-annual-chance flood event determined in a Flood Insurance Study) with an elevation of approximately 13 feet. The Simonton Park site has been developed as part of urban Charleston for over 150 years. The only structures in Simonton Park are seating walls, hardscape paths and benches. As part of the infill project, which included the creation of park space at the Simonton location, the developer was required to comply with City drainage regulations, to include improvements that will assure that post-development run-off does not exceed pre-development run-off.

FEMA's Flood Insurance Rate Map (FIRM) indicates that Gateway Park is in flood zones AE12 and AE 13, requiring the first floor of habitable structures to be elevated above Base Flood Elevation 12 feet and 13 feet, respectively. The improvements at Gateway Park will be open air, consisting of a multi-use trail, a rest area for bicycle and pedestrian exercisers and parking. Drainage will be managed in accordance with City drainage regulations. Little, if any, hardscaping will be installed at the Park.

FEMA's Flood Insurance Rate Map (FIRM) indicates that 64 and 66 DeReef Court are in floodzone AE with an elevation of approximately 13 feet. There are no habitable structures on or planned for these properties. These properties have been developed as part of urban Charleston for over 150 years.

The beneficial values of the floodplain have already been impacted on all of these properties and on much of the Charleston Peninsula by the construction of buildings and impermeable surfaces. Stormwater flows into existing underground drainage systems prior to discharging into the Charleston Harbor.

#### **Land use / ownership patterns; property values; community livability**

Effects to this environmental resource were considered for each of the three Parks, but dismissed because the City has ownership of the properties to designate for public outdoor recreation.

Simonton Park was created as part of a private infill project. The Planned Unit Development (PUD) and Memorandum of Understanding for the infill project required its conveyance to the City, which occurred in November 2007.

Gateway Park was acquired by the City in 2016 to fill a need for a neighborhood park in this area of the City.

64 and 66 DeReef Court were part of an infill project, slated for residential use. These properties will now be dedicated for public outdoor recreation and will enhance livability in the neighborhood.

#### **Circulation, transportation**

Effects to this environmental resource were considered for each of the three Parks, but dismissed because the Parks are/will be easily accessible to the community.

Simonton Park is within an existing urban street system. On-site parking is not available. The Park is designed as a walk-to park for the same community intended to be served by DeReef Park.



Gateway Park, on Folly Road just south of the T. Allen Legare Bridge, provides ready access to the population living within a half mile of its radius, as well as bicycle and pedestrian exercisers wanting ingress or egress from the Peninsula.

64 and 66 DeReef Court will be designed as a walk-to park for the community within an existing urban street system.

**Overall aesthetics, special characteristics/features**

Effects to this environmental resource were considered for each of the three Parks, but dismissed because the Parks are/will be identifiable as urban, neighborhood parks.

Simonton Park incorporates characteristics typical to an urban park, such as hardscape paths and permanent seating walls and benches that line an open and grassed area. The open area is lined by trees that provide shade.

Gateway Park will incorporate features typical to an urban park and pedestrian/bicycle node such as a shared use path for exercise or walking, and areas for reading, playing catch or nature watching.

64 and 66 DeReef Court is visible from the interior of the infill development and from DeReef Park. The improvements to these properties will soften the dense feel of DeReef Court.

**Contamination History (Gateway Park only)**

Gateway Park: Gateway Park was formerly the site of a towing company, bulk fuel storage facility and automobile service station. Identified soil and groundwater contamination was addressed by way of Voluntary Cleanup Contract (VCC) 13-6160-NPR between the City's predecessor in title (35 Folly, LLC) and the South Carolina Department of Health and Environmental Control (SCDHEC). An associated Site Management Plan (SMP) was implemented during development efforts. The SMP included soil and groundwater management that required, among other things, the importation of uncontaminated fill material to serve as a barrier cap. SCDHEC issued a Certificate of Completion on May 5, 2014, documenting the fulfillment of the VCC requirements.

## CHAPTER 4 – ENVIRONMENTAL IMPACTS

This chapter describes how the existing condition of the environmental resources discussed in Chapter 3 would change as a result of the implementation of either alternative. The impacts are assessed to determine whether there would be significant environmental effects.

### Park and Outdoor Recreation Resource Usefulness and Opportunities

**No Action:** The LWCFA Section 6(f)(3) protected DeReef Park was reduced in size by 0.954+/- acres, leaving a 0.346+/- parcel intact for outdoor recreation uses (see Appendix, Item # 3 to EA for Partial Conversion of DeReef Park which can be viewed at [www.charleston-sc.gov](http://www.charleston-sc.gov) under the Community menu). The loss of LWCF 6(f) (3) protected outdoor recreation property if not mitigated with replacement property will cause a reduction of the total federally protected public outdoor recreation estate nationwide, including for the State and City. The State and City will be in non-compliance with applicable federal law and regulations governing the LWCFA program. As such, NPS may withhold payment of federal funds to the State/City, withhold approval of future projects of the State/City, and take such other actions deemed appropriate under the circumstances until compliance or remedial action has been accomplished by the State to the satisfaction of NPS (see LWCF Manual Chapter 8.N regarding Penalties for Failure to Comply with Federal Laws and Regulations).

**Action:** The City intends to mitigate the recreational loss with replacement parks – Simonton Park, Gateway Park, and 64 and 66 DeReef Court – which, in the aggregate, exceed the size of recreational space lost at DeReef Park as a result of the conversion.

Simonton Park is .0278 acres. It consists of a tree-line grassed lawn, hardscape seating walls, a central garden surrounded by crushed path and benches. Recreational opportunities provided by Simonton Park include amenities provided at DeReef Court, to include a grassed lawn for catch or Frisbee, seating for resting, reading or enjoying nature, trees and a garden. The Park is ADA compliant.

Gateway Park is approximately one acre in size. The Park will provide views of the Ashley River, a grassed lawn for catch or Frisbee, a shared-use path for cyclists, pedestrians and exercisers, a rest area for bicyclists and pedestrians accessing the peninsula from the T. Allen Legare Bridge, shade trees and on-site parking. The lawn, seating areas and exercise space are comparable to the amenities offered at De Reef Park.

64 and 66 DeReef comprise 0.08 acre. These parcels will be grassed and landscaped and will include seating and a path leading across other City-owned property to the sidewalk on Smith Street. Recreational opportunities provided by this park will be consistent with those offered at DeReef Park, outdoor sitting, reading and people-watching.

The three replacement sites, in the aggregate, are larger in size than the recreational space lost at DeReef Park. Two of the parks (Simonton and 64 and 66 DeReef Court) will serve the same geographic area of the City as did DeReef Park. The amenities planned for the parks are consistent with what was provided at DeReef. Gateway Park has an additional benefit of allowing for connectivity between the Peninsula and West Ashley, and a connection to an existing 8.25 acres linear park.

## **Socioeconomics**

**No Action:** The City chooses not to mitigate for the acreage lost at DeReef Park as a result of the conversion potentially causing overcrowding or overuse of other urban park spaces in the area.

**Action:** LWCFA Section 6(f)(3) protection being extended to Simonton Park, 64 and 66 DeReef Court and Gateway Park will make up for the acreage lost at DeReef Park due to the partial conversion. The amenities offered at these parks will complement those at DeReef Park, and in the case of Gateway Park, provide the added opportunity for a pedestrian/bicycle connection between the Peninsula and a nearby greenway.

## **Minority and low-income populations**

**No Action:** There would be no accounting for the loss in space and the consequential loss in recreational opportunities.

**Action:** LWCFA 6(f)(3) protection being extended to Simonton Park, Gateway Park and 64 and 66 DeReef Court will make up for the acreage lost at DeReef Park as a result of the conversion. Simonton Park, Gateway Park and 64 and 66 DeReef Court are improved for outdoor recreational uses consistent with those provided at DeReef Park. With two of the sites being in the immediate area of DeReef Park, the same neighborhoods DeReef was designed to serve will continued to be served. Gateway Park will provide additional outdoor recreational opportunities consistent with those at DeReef, and an added bonus of providing connectivity to a 8.25 mile linear park and the potential for connectivity between West Ashley and the Peninsula.

## **CHAPTER 5 - COORDINATION AND CONSULTATION**

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## APPENDIX

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## APPENDIX #1

## Code of Federal Regulations

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### Title 36 - Parks, Forests, and Public Property

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Volume: 1

Date: 2014-07-01

Original Date: 2014-07-01

Title: PART 59 - LAND AND WATER CONSERVATION FUND PROGRAM OF ASSISTANCE TO STATES; POST-COMPLETION COMPLIANCE RESPONSIBILITIES

Context: Title 36 - Parks, Forests, and Public Property. CHAPTER I - NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR.

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#### Pt. 59

#### **PART 59—LAND AND WATER CONSERVATION FUND PROGRAM OF ASSISTANCE TO STATES; POST-COMPLETION COMPLIANCE RESPONSIBILITIES**

##### **Sec.**

**59.1** Applicability.

**59.2** Information collection.

**59.3** Conversion requirements.

**59.4** Residency requirements.

**59.5-59.6** [Reserved]

**Authority:** Sec. 6, L&WCF Act of 1965 as amended; Pub. L. 88-578; 78 Stat. 897; 16 U.S.C. 4601-4 et seq.

**Source:** 51 FR 34184, Sept. 25, 1986, unless otherwise noted.

##### **§ 59.1 Applicability.**

These post-completion responsibilities apply to each area or facility for which Land and Water Conservation Fund (L&WCF) assistance is obtained, regardless of the extent of participation of the program in the assisted area or facility and consistent with the contractual agreement between NPS and the State. Responsibility for compliance and enforcement of these provisions rests with the State for both State and locally sponsored projects. The responsibilities cited herein are applicable to the area depicted or otherwise described on the 6(f)(3) boundary map and/or as described in other project documentation approved by the Department of the Interior. In many instances, this mutually agreed to area exceeds that actually receiving L&WCF assistance so as to assure the protection of a viable recreation entity. For leased sites assisted under L&WCF, compliance with post-completion requirements of the grant ceases following lease expiration unless the grant agreement calls for some other arrangement.

##### **§ 59.2 Information collection.**

The information collection requirements contained in § 59.3 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1024-0047. The information is being collected to determine whether to approve a project sponsor's request to convert an assisted site or facility to other than public outdoor recreation uses. The information will be used to assure that the requirements of section 6(f)(3) of the L&WCF Act would be met should the proposed conversion be implemented. Response is required in order to obtain the benefit of Department of the Interior approval.

##### **§ 59.3 Conversion requirements.**

(a) *Background and legal requirements.* Section 6(f)(3) of the L&WCF Act is the cornerstone of

Federal compliance efforts to ensure that the Federal investments in L&WCF assistance are being maintained in public outdoor recreation use. This section of the Act assures that once an area has been funded with L&WCF assistance, it is continually maintained in public recreation use unless NPS approves substitution property of reasonably equivalent usefulness and location and of at least equal fair market value.

(b) *Prerequisites for conversion approval.* Requests from the project sponsor for permission to convert L&WCF assisted properties in whole or in part to other than public outdoor recreation uses must be submitted by the State Liaison Officer to the appropriate NPS Regional Director in writing. NPS will consider conversion requests if the following prerequisites have been met:

(1) All practical alternatives to the proposed conversion have been evaluated.

(2) The fair market value of the property to be converted has been established and the property proposed for substitution is of at least equal fair market value as established by an approved appraisal (prepared in accordance with uniform Federal appraisal standards) excluding the value of structures or facilities that will not serve a recreation purpose.

(3) The property proposed for replacement is of reasonably equivalent usefulness and location as that being converted. Dependent upon the situation and at the discretion of the Regional Director, the replacement property need not provide identical recreation experiences or be located at the same site, provided it is in a reasonably equivalent location. Generally, the replacement property should be administered by the same political jurisdiction as the converted property. NPS will consider State requests to change the project sponsor when it is determined that a different political jurisdiction can better carry out the objectives of the original project agreement. Equivalent usefulness and location will be determined based on the following criteria:

(i) Property to be converted must be evaluated in order to determine what recreation needs are being fulfilled by the facilities which exist and the types of outdoor recreation resources and opportunities available. The property being proposed for substitution must then be evaluated in a similar manner to determine if it will meet recreation needs which are at least like in magnitude and impact to the user community as the converted site. This criterion is applicable in the consideration of all conversion requests with the exception of those where wetlands are proposed as replacement property. Wetland areas and interests therein which have been identified in the wetlands provisions of the Statewide Comprehensive Outdoor Recreation Plan shall be considered to be of reasonably equivalent usefulness with the property proposed for conversion regardless of the nature of the property proposed for conversion.

(ii) Replacement property need not necessarily be directly adjacent to or close by the converted site. This policy provides the administrative flexibility to determine location recognizing that the property should meet existing public outdoor recreation needs. While generally this will involve the selection of a site serving the same community(ies) or area as the converted site, there may be exceptions. For example, if property being converted is in an area undergoing major demographic change and the area has no existing or anticipated future need for outdoor recreation, then the project sponsor should seek to locate the substitute area in another location within the jurisdiction. Should a local project sponsor be unable to replace converted property, the State would be responsible, as the primary recipient of Federal assistance, for assuring compliance with these regulations and the substitution of replacement property.

(iii) The acquisition of one parcel of land may be used in satisfaction of several approved conversions.

(4) The property proposed for substitution meets the eligibility requirements for L&WCF assisted acquisition. The replacement property must constitute or be part of a viable recreation area. Unless *each* of the following additional conditions is met, land currently in public ownership, including that which is owned by another public agency, may not be used as replacement land for land acquired as part of an L&WCF project:

(i) The land was not acquired by the sponsor or selling agency for recreation.

(ii) The land has not been dedicated or managed for recreational purposes while in public ownership.



(iii) No Federal assistance was provided in the original acquisition unless the assistance was provided under a program expressly authorized to match or supplement L&WCF assistance.

(iv) Where the project sponsor acquires the land from another public agency, the selling agency must be required by law to receive payment for the land so acquired.

In the case of development projects for which the State match was not derived from the cost of the purchase or value of a donation of the land to be converted, but from the value of the development itself, public land which has not been dedicated or managed for recreation/conservation use may be used as replacement land even if this land is transferred from one public agency to another without cost.

(5) In the case of assisted sites which are partially rather than wholly converted, the impact of the converted portion on the remainder shall be considered. If such a conversion is approved, the unconverted area must remain recreationally viable or be replaced as well.

(6) All necessary coordination with other Federal agencies has been satisfactorily accomplished including, for example, compliance with section 4(f) of the Department of Transportation Act of 1966.

(7) The guidelines for environmental evaluation have been satisfactorily completed and considered by NPS during its review of the proposed 6(f)(3) action. In cases where the proposed conversion arises from another Federal action, final review of the State's proposal shall not occur until the NPS Regional office is assured that all environmental review requirements related to that other action have been met.

(8) State intergovernmental clearinghouse review procedures have been adhered to if the proposed conversion and substitution constitute significant changes to the original Land and Water Conservation Fund project.

(9) The proposed conversion and substitution are in accord with the Statewide Comprehensive Outdoor Recreation Plan (SCORP) and/or equivalent recreation plans.

(c) *Amendments for conversion.* All conversions require amendments to the original project agreements. Therefore, amendment requests should be submitted concurrently with conversion requests or at such time as all details of the conversion have been worked out with NPS. Section 6(f)(3) project boundary maps shall be submitted with the amendment request to identify the changes to the original area caused by the proposed conversion and to establish a new project area pursuant to the substitution. Once the conversion has been approved, replacement property should be immediately acquired. Exceptions to this rule would occur only when it is not possible for replacement property to be identified prior to the State's request for a conversion. In such cases, an express commitment to satisfy section 6(f)(3) substitution requirements within a specified period, normally not to exceed one year following conversion approval, must be received from the State. This commitment will be in the form of an amendment to the grant agreement.

(d) *Obsolete facilities.* Recipients are not required to continue operation of a particular facility beyond its useful life. However, when a facility is declared obsolete, the site must nonetheless be maintained for public outdoor recreation following discontinuance of the assisted facility. Failure to so maintain is considered to be a conversion. Requests regarding changes from a L&WCF funded facility to another otherwise eligible facility at the same site that significantly contravene the original plans for the area must be made in writing to the Regional Director. NPS approval must be obtained prior to the occurrence of the change. NPS approval is not necessarily required, however, for each and every facility use change. Rather, a project area should be viewed in the context of overall use and should be monitored in this context. A change from a baseball field to a football field, for example, would not require NPS approval. A change from a swimming pool with substantial recreational development to a less intense area of limited development such as a passive park, or vice versa, would, however, require NPS review and approval. To assure that facility changes do not significantly contravene the original project agreement, NPS shall be notified by the State of *all* proposed changes in advance of their occurrence. A primary NPS consideration in the review of requests for changes in use will be the

consistency of the proposal with the Statewide Comprehensive Outdoor Recreation Plan and/or equivalent recreation plans. Changes to other than public outdoor recreation use require NPS approval and the substitution of replacement land in accordance with section 6(f)(3) of the L&WCF Act and paragraphs (a) through (c) of this section.

[51 FR 34184, Sept. 25, 1986, as amended at 52 FR 22747, June 15, 1987]

**§ 59.4            Residency requirements.**

(a) *Background.* Section 6(f)(8) of the L&WCF Act prohibits discrimination on the basis of residence, including preferential reservation or membership systems, except to the extent that reasonable differences in admission and other fees may be maintained on such basis. This prohibition applies to both regularly scheduled and special events. The general provisions regarding non-discrimination at sites assisted under Interior programs and, thereby, all other recreation facilities managed by a project sponsor, are covered in 43 CFR part 17 which implements the provisions of Title VI of the Civil Rights Act of 1964 for the Department.

(b) *Policy.* There shall be no discrimination for L&WCF assisted programs and services on the basis of residence, except in reasonable fee differentials. Post-completion compliance responsibilities of the recipient should continue to ensure that discrimination on the basis of residency is not occurring.

(c) *Fees.* Fees charged to nonresidents cannot exceed twice that charged to residents. Where there is no charge for residents but a fee is charged to nonresidents, nonresident fees cannot exceed fees charged for residents at comparable State or local public facilities. Reservation, membership, or annual permit systems available to residents must also be available to nonresidents and the period of availability must be the same for both residents and nonresidents. Recipients are prohibited from providing residents the option of purchasing annual or daily permits while at the same time restricting nonresidents to the purchase of annual permits only. These provisions apply only to the approved 6(f)(3) areas applicable to the recipient. Nonresident fishing and hunting license fees are excluded from these requirements.

**§§ 59.5-59.6    [Reserved]**

## APPENDIX # 2

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
NATIONAL PARK SERVICE

STATE South CarolinaProject Amendment No. 45-00856.6  
45-00985.3

## AMENDMENT TO PROJECT AGREEMENT

THIS AMENDMENT To Project Agreement No. 45-00856 is hereby made and agreed upon by the United States of America, acting through the Director of the National Park Service and by the State of South Carolina pursuant to the Land and Water Conservation Fund Act of 1965, 78 Stat. 897 (1964).

The State and the United States, in mutual consideration of the promises made herein and in the agreement of which this is an amendment, do promise as follows:

That the above mentioned agreement is amended by adding the following:

Partially convert DeReef Park, formerly known as Radcliffeborough Park, located on Morris Street in downtown Charleston, South Carolina, by removing LWCF protection from 0.954± acres, leaving 0.346± acres under LWCF protection. The remaining LWCF protected portion of DeReef Park will continue to be owned by the City of Charleston and will be renovated as a smaller neighborhood park to serve public outdoor recreation purposes.

The City of Charleston will mitigate this action by securing replacement site(s) within one year of approval of this amendment pursuant to the Land and Water Conservation Act conversion regulations at 36 C.F.R. 59.3.

The attached Programmatic Agreement will be in effect upon the approval of this amendment.

In all other respects the agreement of which this is an amendment, and the plans and specifications relevant thereto, shall remain in full force and effect. In witness thereof the parties hereto have executed this amendment as of the date entered below.

THE UNITED STATES OF AMERICA

By 

For

(Signature)

Regional Director  
Southeast Region

(Title)

National Park Service  
United States Department of the Interior

Date 7/20/2016

STATE

  
South Carolina

(State)

By 

(Signature)

Phil Gaines

(Name)

State Liaison Officer

(Title)

Paperwork Reduction Act Statement: This information collection is authorized by the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-4 et seq.). Your response is required to obtain or retain a benefit. We use this information to document changes made to original grant agreement. We estimate that it will take 3 hours to complete this form, including the time necessary to review instructions gather data and review the form.

You may send comments on the burden estimate or any aspect of this form to the Information Collection Clearance Officer, National Park Service, 1849 C Street, NW, (2601), Washington, DC 20240. We may not collect or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

**U.S. Department of the Interior  
National Park Service, Southeast Region**

**FINDING OF NO SIGNIFICANT IMPACT**

**LWCFA Section 6(f)(3) Partial Conversion of DeReef Park  
Charleston, South Carolina**

**INTRODUCTION**

The City of Charleston (City), through the State of South Carolina (State), is proposing the removal of the federal Land and Water Conservation Fund Act (LWCFA) restriction of use as public outdoor recreation, now codified at 54 U.S.C. Section 200305(f)(3) (referred to as Section 6(f)(3)) from a portion of DeReef Park (Park), formerly known as Radcliffeborough Park, located on Morris Street in downtown Charleston, and securing replacement property within one year of National Park Service (NPS) conversion approval pursuant to the LWCFA conversion regulations at 36 C.F.R. 59.3.

In 1981, a LWCFA grant was awarded to the State, who in turn awarded (or sub-granted) the funds to assist the City in the acquisition of property to create DeReef Park. A subsequent LWCFA grant was sub-granted in 1991 to assist in the development of some park facilities. The State and City accepted the terms of each project agreement with full knowledge that those terms included maintaining DeReef Park for public outdoor recreation purposes unless otherwise approved by the Secretary of the U.S. Department of the Interior (DOI), delegated to the NPS, through the LWCFA conversion process.

On January 17, 2008, the City conveyed a portion of DeReef Park property to a private party for a project involving a planned unit infill development (Infill Project) which will permanently occupy a portion of LWCFA Section 6(f)(3) restricted park property preventing public outdoor recreation use thus triggering a conversion. In September 2008, the State submitted a proposal to NPS seeking "after-the-fact" approval for the DeReef Park conversion including replacement property. NPS approved this original conversion request in November 2008.

In 2014, due to a lawsuit alleging the unlawful approval of the DeReef Park conversion, the United States District Court granted the NPS' motion for a voluntary remand for the reconsideration of its original 2008 approval of the conversion to include compliance with the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA). NPS prepared an Environmental Assessment (EA) to satisfy the requirements of the NEPA of 1969, as amended, and its implementing regulations (43 C.F.R. 1500-1508); the DOI NEPA regulations (40 C.F.R. Part 43); and the NPS LWCFA State Assistance Program Manual, Volume 69 (2008). An (EA) was prepared in the context of conditions that existed as of January 17, 2008, when DeReef Park property was conveyed to the developer. It does not address events occurring after that date. The NHPA Section 106 process was conducted, resulting in a Programmatic Agreement.

## **BACKGROUND**

DeReef Park is a 1.3+/- acre neighborhood park located on Morris Street in downtown Charleston in the Radcliffeborough section of the City. The Park was partially acquired and developed with the assistance of two federal LWCFA grants. By accepting these two federal grants, the State, and in turn, the City, agreed to keep the entire park area available for public outdoor recreation purposes per LWCFA Section 6(f)(3) unless otherwise approved by the NPS through the conversion process. The Park property parcels covered by this restriction were verified as part of preparing the EA for this conversion.

DeReef Park is a walk-to park and serves a residential area within a half-mile radius of the site, including both the Radcliffeborough and Elliotborough/Cannonborough neighborhoods. Most users walk to the Park, and public street parking is also available. Public access into the Park is from Morris Street and DeReef Court. The Park contained passive outdoor recreation features including walkways; an open lawn area; shade trees; a drinking fountain; benches; picnic and game tables; play equipment; a small spray-play feature; and the Sons and Daughters of Joseph No.9 Mission chapel (a small building also known as the Praise House). The Park offered outdoor recreation opportunities allowing users to: relax; picnic; play on playground equipment; toss Frisbees and balls; and gather in small groups.

On January 17, 2008, the City conveyed a 0.954+/- acre portion out of the 1.3+/- acre DeReef Park Section 6(f)(3) restricted property to a private party for the Infill Project which will permanently occupy the 0.954+/- acres. The NPS is now conducting a new conversion process by reviewing a revised proposal by the City through the State to remove the Section 6(f)(3) restriction from the 0.954+/- portion of DeReef Park. The remaining 0.346+/- acre portion of DeReef Park will be reconfigured as a smaller neighborhood park retaining its LWCFA Section 6(f)(3) restriction. The City, through the State, proposes to mitigate this action by securing replacement site(s) within 1 year of NPS approval of this proposal pursuant to the LWCFA conversion regulations at 36 C.F.R. 59.3(c).

## **LWCFA CONVERSION REQUIREMENTS**

According to the LWCFA, no property acquired or developed with assistance under Section 6(f)(3) shall, without the approval of the Secretary of the Interior (delegated to the NPS), be converted to other than public outdoor recreation uses. A LWCFA conversion is triggered when a private and/or non-recreation use permanently occurs on Section 6(f)(3) restricted property.

The LWCFA State Assistance Program Manual of 2008, Chapter 8.E.10, addresses conversions that occur prior to NPS approval. In these cases, an "after the fact" conversion proposal must be submitted to the NPS for review and the decision process is conducted retroactively. In the case of the DeReef Park conversion, the property was conveyed to a private party on January 17, 2008. NPS considers this date the point at which the conversion occurred.

The scope of the NPS review is limited to removal of the Section 6(f)(3) restriction on a portion of DeReef Park, the impact of the restriction removal on the remaining 6(f) portion of the Park,

and the grantee's (the State's) commitment that proposed replacement property will meet the criteria in 36 C.F.R. 59.3.

Furthermore, the LWCFA conversion regulations allow for delayed replacement of property at 36 C.F.R. 59(c) when it is not possible for the State to secure replacement property prior to the State's formal request for a conversion. In such cases an express commitment to satisfy Section 6(f)(3) substitution requirements within a specified period, normally not to exceed 1 year following NPS conversion approval, must be received from the State. This commitment will be in the form of a conversion amendment to the grant agreement. The State proposes to work with its sub-grantee, the City, to secure replacement property within the 1 year period.

## ENVIRONMENTAL REVIEW PROCESS

The NPS is using the "DeReef Park LWCFA Section 6(f)(3) Conversion Environmental Assessment" of July 2015 prepared by the City in cooperation with the State as the environmental assessment under NEPA. The EA was required to help the NPS evaluate the environmental impacts on significant resources and other issues by removing the federal public outdoor recreation use restriction (the proposed action). This includes determining whether the remaining Section 6(f)(3) restricted DeReef Park will constitute a viable outdoor recreation unit and establishing the baseline mitigation requirements for replacement site "outdoor recreation usefulness" per 36 C.F.R. 59.3(b)(3).

A separate NEPA process will be conducted to address proposed replacement site(s) under the "conversion with delayed replacement" provision in the LWCFA conversion regulations at 36 C.F.R. 59.3(c).

The EA was drafted in the context of conditions that existed as of January 17, 2008, the date DeReef Park property was conveyed to the private party. It does not address events occurring after that date.

## ALTERNATIVES CONSIDERED

**No Action Alternative:** NPS does not receive a proposal from the State to convert a portion of DeReef Park pursuant to the LWCFA conversion regulations even though DeReef Park is conveyed to a private interest for non-public and non-outdoor recreation purposes. The private use of LWCFA Section 6(f)(3) property without seeking NPS approval would subject the State to penalties for failure to comply with federal laws and regulations.

**Proposed Action Alternative (*NPS Selected Alternative*):** NPS receives a proposal from the State to convert a 0.954+/- acre portion of DeReef Park, including a State commitment to require the City, the State's LWCFA subrecipient, to secure replacement property within 1 year of NPS conversion approval pursuant to the federal LWCFA conversion regulations. The remaining LWCFA Section 6(f)(3) restricted 0.346 +/- acre portion of DeReef Park will continue to be used for public outdoor recreation purposes as a smaller yet viable neighborhood park area.

Based on the analysis presented in the EA, the NPS has selected the Proposed Action Alternative for approval.

The remaining 0.346+/- acre portion of DeReef Park will retain its Section 6(f)(3) restriction and will continue to provide public outdoor recreation opportunities for the original service neighborhoods as a smaller neighborhood park serving nearby dense, urban neighborhoods.

The Praise House structure, relocated to the remaining DeReef Park, will be rehabilitated according to the principles of the Secretary of the Interior's Standards for the Treatment of Historic Properties. The Praise House will be used to primarily support public outdoor recreation purposes. Its new location in the Park provides increased visibility from Morris Street.

The Park will be bordered by neighborhood streets on its north, south and west sides. Because the Park will be defined by streets on three of its four sides, traditional walk-to access to the Park will be maintained.

Based on the analysis provided in Chapter 3 of the EA, the impacts of the proposed conversion are as follows:

**Floodplains:** The proposed partial conversion would relocate the Praise House to the southeast corner of the Park, still in an AE flood zone. In conjunction with the relocation, the foundation of the Praise House will be slightly raised. This slight raise in elevation, along with drainage improvements required of the developer by the Infill Project, will provide better protection against flooding.

**Park and Outdoor Recreation Resource Usefulness and Opportunities:** The proposed partial conversion would result in a change from public to private ownership of 0.954+/- acres of the 1.3+/- acre DeReef Park for non-outdoor recreation uses. This portion of the Park will not be available to the public for outdoor recreational uses. Types of facilities located on this converted portion of the Park include off-street parking, play equipment, a drinking fountain, game tables and a grassy area. The converted portion of the Park also included the Praise House; however, the Praise House was relocated to the remaining 0.346+/- acre area of the Park where it will be rehabilitated for public outdoor recreation support uses. The City will mitigate the 0.954+/- acre loss with required replacement sites(s) within a year of NPS conversion approval as allowed per the LWCFA conversion regulations at 36 C.F.R. 59.3(c)

As converted, the remaining Park will include a modern playground area; open space with mature shade trees; new landscaping; and new restrooms and sheltered program space to support outdoor recreation programs in the rehabilitated Praise House. The remaining Park will maintain direct frontage on Morris Street. The area of the Park will be more defined, and its fenced-in play area better secured. It is anticipated that users of the converted Park will be predominantly from surrounding neighborhoods and will walk to the Park, as was the case with DeReef Park prior to the conversion. The loss of parking on DeReef Court should not affect the use of the remaining Park. Street parking will still be available. The remaining Section 6(f)(3) restricted DeReef Park totaling 0.346+/- acres will comprise a viable outdoor recreation area.



**Aesthetics:** The proposed partial conversion will improve visibility of DeReef Park from Morris Street, as well as the other streets within the Infill Project that abuts it. The look of the Park will be improved with installation of an attractive wrought iron fence that will define and secure the new play area. New sidewalks will border the Park, and the Praise House will be restored at its new, more prominent, and publicly visible location within the remaining Park.

**Historic Resources:** The proposed partial conversion will renovate the Praise House, pursuant to plans approved by the South Carolina State Historic Preservation Office (SHPO) in 1996, updated to conform to current code requirements, and in accordance with the Charleston Standards for historic preservation established by the Board of Architectural Review (BAR) and based on the *Secretary of the Interior's Standards for the Treatment of Historic Properties*. The structure will have restroom facilities and will comply with requirements of the Americans with Disabilities Act.

The 0.354+/- acre portion of DeReef Park remaining after the partial conversion will include the Praise House structure, which was moved from its location at 9 DeReef Court to the southeast corner of the Park on Morris Street. The orientation of the structure is on a north-south axis, as opposed to the east-west axis when at 9 DeReef Court. At its new location, the Praise House is more visible and accessible to the public. Its adaptive reuse to support public outdoor recreation purposes such as summer camps, and its publicly available restroom facilities, will complement the recreational opportunities to be provided by DeReef Park, as converted, and will enhance the comfort of Park users. Its renovation and reuse will preserve a deteriorating structure that is considered a contributing resource to an eligible National Register District.

This partial conversion is an undertaking subject to Section 106 of the NHPA, as amended, Public Law 89-665; U.S.C. 470 et seq. As presented in the EA, the NPS, in consultation with the SHPO and interested parties, initially agreed that the partial conversion would not adversely affect historic properties eligible for the National Register of Historic Places, specifically the Praise House. Upon further review, it was determined that the Praise House is a contributing resource to the expansion of the National Register eligible Charleston Old and Historic District, and as such, the relocation of the Praise House is an adverse effect. A Programmatic Agreement (see Appendix A) has been signed by the Advisory Council on Historic Preservation, the South Carolina SHPO, the South Carolina Department of Parks, Recreation, and Tourism, the City of Charleston and the National Park Service in accordance with Section 106 of the NHPA, and 36 C.F.R. 800.14(b)(3), to mitigate the effects.

**Socioeconomics/Minority and Low Income Population:** The demographics of the area have changed since DeReef Park was originally planned in the 1980s and opened in the 1990s. This change in demographics had occurred prior to the Infill Project coming on line and prior to the conversion. The area in and around DeReef Park is now mostly populated by nonfamily households of college or young professional age. The African American population of the area dropped from 87 percent in 1980 to 55.3 percent in 2000.

DeReef Park, as reconfigured, will maintain the amenities of the original Park for the service population within a half-mile radius, to include updated, modern play equipment for children. Its

lawn will still accommodate passive recreational pursuits, such as reading, picnicking, light exercise and general relaxation. This partial conversion will further allow for the rehabilitation and adaptive reuse for recreational purposes of the Praise House, to include restroom facilities and indoor park program space. This added amenity will benefit all users of the Park and preserve for public use and enjoyment an important cultural resource. Although the demographics have changed, the investment in the extant Praise House will preserve an important part of the historic African American community that thrived during the nineteenth and twentieth centuries and will connect modern park users with an historic community resource that contributes to the history of African Americans in Charleston.

The replacement site(s) will mitigate the loss of public outdoor recreation resources and opportunities pursuant to the conversion regulations.

### **WHY THE SELECTED ALTERNATIVE WILL NOT HAVE A SIGNIFICANT EFFECT ON THE HUMAN ENVIRONMENT**

As defined in 40 C.F.R. Section 1508.27, significance within NEPA is determined by examining the following criteria:

**1) Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.**

The Selected Alternative will not have adverse impacts to floodplains, aesthetics, or socioeconomics/minority and low income populations. Any potential adverse impacts to historic resources will be mitigated below the threshold of significance by complying with the NHPA which resulted in a Programmatic Agreement (see Appendix A). The State has committed to securing replacement property within 1 year of NPS approval of the LWCFA grant amendment to remove the Section 6(f)(3) restriction from the 0.954+/- acres as allowed in the LWCFA conversion regulations.

**2) The degree to which the proposed action affects public health or safety.**

The Selected Alternative will not adversely affect public health and safety. The new play area will be framed by a handsome wrought iron fence to provide better definition and to secure safety of users, particularly children, from traffic.

**3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.**

The Selected Alternative will have an adverse effect upon the expansion of the Charleston Old and Historic District, eligible for listing on the National Register of Historic Places (NRHP) because the Praise House located in remaining DeReef Park is a contributing resource to the District. These impacts have been mitigated below the threshold of significance as detailed in the attached Programmatic Agreement in accordance with Section 106 of the NHPA, and 36 C.F.R. 800.14(b)(3) (see Appendix A).

**4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.**

Substantive comments received during public review of the EA were provided a response (see attached "Response to Public Comments" Appendix B). Concerns about the Praise House have been addressed in a Programmatic Agreement (see Appendix A). No highly controversial impacts have been identified. *(Controversy exists when substantial questions are raised as to whether a project may cause significant degradation of some human environmental factor. Controversy refers not to the existence of public opposition, but to a substantial dispute as to the size, nature, or effect of the federal action (Northwest Environmental Defense Center v. Bonneville Power Administration, 117 F.3d 1520, 1539, U.S. Court of Appeals, Ninth Circuit, 1997, quoting LaFlamme v. FERC, 852 F.2d 389, 397, U.S. Court of Appeals, Ninth Circuit, 1988). Mere opposition to a federal project does not make a project controversial so as to require an environmental impact statement.*

**5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.**

No highly uncertain effects on the quality of the human environment or unknown risks were identified throughout the environmental review process for the Selected Alternative.

**6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.**

The proposed LWCFA Section 6(f)(3) conversion proposal and decision was evaluated under the standard conversion process criteria in 36 C.F.R. 59.3, thus, the Selected Alternative neither establishes a precedent for future actions with significant effects nor represents a decision in principle about a future consideration.

**7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.**

The Selected Alternative will not have any significant cumulative adverse impacts.

**8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.**

The Selected Alternative will result in an adverse effect on the expansion of the Charleston Old and Historic District, eligible for listing on the NRHP because the Praise House in DeReef Park is a contributing resource to the District. These impacts have been mitigated below the threshold of significance as detailed in the Programmatic Agreement, in accordance with Section 106 of the NHPA, and 36 C.F.R. 800.14(b)(3), (see Appendix A) resulting in overall improvements to the Praise House structure and public access to the building.

**9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.**

The Selected Alternative will not result in any adverse effects on endangered or threatened species or its habitat (see Appendix C).

**10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.**

The Selected Alternative has been evaluated in accordance with the LWCFA Section 6(f)(3) conversion criteria at 36 C.F.R. 59.3, and other applicable federal, state, and local requirements and has been found to be consistent with the law. Thus, the Selected Alternative does not threaten a violation of federal, state or local environmental protection law.

**AGENCY COORDINATION**

During the preparation of the EA, the NPS, the State, and the City coordinated with federal, state and local resource agencies, including the U.S. Fish and Wildlife Service (USFWS), the Advisory Council on Historic Preservation (ACHP), South Carolina Department of Parks, Recreation, and Tourism (SCPRT), South Carolina SHPO, and the City of Charleston.

**Section 7 of the Endangered Species Act Consultation**

Individual requests for updated information on rare, threatened or endangered species were submitted to the USFWS on May 11, 2015 for the DeReef Park partial conversion area. As described in Chapter 3 of the EA, the USFWS has concurred with the determination that there are no known occurrences of threatened or endangered species in the area of DeReef Park. Accordingly, the NPS has made a determination of No Effect in accordance with Section 7 of the Endangered Species Act (see Appendix C).

**Section 106 of the National Historic Preservation Act Consultation**

In a letter dated November 9, 2015, the SHPO concurred with the NPS NHPA Section 106 process to continue to work with consulting parties to develop a Programmatic Agreement to resolve adverse effects (36 C.F.R. 800.14(b)) relating to the partial conversion of the DeReef Park (See Appendix D).

The Programmatic Agreement includes stipulations to reduce any impacts below the threshold of significance resulting in overall improvements to the Praise House structure and public access to the building (see Appendix A). The Programmatic Agreement was signed by all signatory parties and completed on June 1, 2016.

The Programmatic Agreement will be included in the LWCFA conversion amendment and conversion approval letter.

**PUBLIC COMMENT**

The EA was released for a 30-day public comment period from July 16, 2015, through August 14, 2015. A Notice of Availability of the EA was submitted to the Post and Courier, a local publication. The Post and Courier published the Notice on July 15, 2015, indicating where copies of the document were available and the period for public comment. Printed and electronic copies (compact disks) of the EA were available for review at the offices of the City of

Charleston Legal Department, located at 50 Broad Street, 2<sup>nd</sup> Floor, Charleston, SC. In addition, a copy of the EA, with instructions for commenting, was available online ([www.charleston-sc.gov/DeReefParkEA](http://www.charleston-sc.gov/DeReefParkEA)).

Thirty-three individuals and one (1) local organization, which is also a NHPA Section 106 consulting party provided comments on the EA. Comments included both support for and opposition to the partial conversion. There were a number of comments that discussed specific post-conversion actions beyond the scope of the EA, including the surrounding Historic District and the LWCF conversion replacement site(s) selection. Comments about historic properties were considered during the NHPA Section 106 consultation process and resulting Programmatic Agreement (see Appendix A).

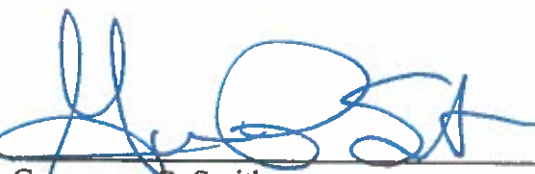
A summary of the comments received with responses are included as Appendix B of this FONSI. No changes were made to the Selected Alternative.

## FINDING OF NO SIGNIFICANT IMPACT

Based on the content of the EA prepared under NEPA, the NPS Selected Alternative does not constitute an action that requires preparation of an Environmental Impact Statement (EIS). The Selected Alternative will not have a significant effect on the human environment. There are no significant impacts on public health, public safety, threatened or endangered species. The Selected Alternative will have an adverse effect on the expansion of the Charleston Old and Historic District, eligible for listing on the National Register of Historic Places (NRHP) because the Praise House in DeReef Park is a contributing resource to the District. A Programmatic Agreement (see Appendix A) was developed and signed by ACHP, NPS, SHPO, SCPRT, City of Charleston, to mitigate the adverse effects of the conversion to below the threshold of significance. No highly uncertain or controversial impacts, unique or unknown risks, significant cumulative effects, or elements of precedence were identified. Implementation of the NPS Selected Alternative is consistent with 36 C.F.R. 59.3 including the State's commitment to secure replacement site(s) as allowed in the LWCF conversion regulations at 36 C.F.R. 59.3(c), i.e., within 1 year of NPS approval of the conversion amendment. The Selected Alternative and will not violate any federal, state, or local environmental protection law.

Based on the foregoing, it has been determined that an EIS is not required for this action and thus will not be prepared.

Recommended by:



Gwenevere P. Smith  
Chief, Recreation Programs Branch  
National Park Service  
Southeast Region

07/14/2016

Date

Approved:



Stan Austin  
Regional Director  
National Park Service  
Southeast Region

7/20/2016

Date

APPENDIX A  
PROGRAMMATIC AGREEMENT

**PROGRAMMATIC AGREEMENT  
AMONG  
THE NATIONAL PARK SERVICE  
AND THE  
SOUTH CAROLINA STATE HISTORIC PRESERVATION OFFICE  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION  
SOUTH CAROLINA DEPARTMENT OF PARKS, RECREATION, AND TOURISM  
THE CITY OF CHARLESTON, SOUTH CAROLINA  
REGARDING  
SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT  
FOR THE CONVERSION OF A PORTION OF DEREEF PARK**

WHEREAS, the National Park Service (NPS) administers the Land and Water Conservation Fund Act (LWCF) State and Local Assistance Program (Public Law 88-578, 78 Stat 897); and

WHEREAS, NPS is responsible for ensuring compliance with Section 106 of the National Historic Preservation Act (NHPA), (54 U.S.C. § 306108); and

WHEREAS, the Governor of South Carolina has delegated to South Carolina Department of Parks, Recreation, and Tourism (SCPRT) the responsibility of administering the Land and Water Conservation program in accordance with Section 6(f)(2) of the LWCF, and thereby serves as the NPS contractor for the purposes of complying with Section 106 of the NHPA per 36 C.F.R. § 800.2(a)(3), and is an invited signatory to this Programmatic Agreement (Agreement); and

WHEREAS, in 1991 and 1993, the NPS awarded grants 45-00856 and 45-00985 to the SCPRT to acquire property and to make outdoor recreation improvements at DeReef Park in the City of Charleston, South Carolina; and

WHEREAS, the SCPRT sub-awarded these grants to the local sponsor, the City of Charleston (CITY) for accomplishing LWCF program objectives, thus the CITY serves as the NPS sub-contractor for purposes of complying with Section 106 of the NHPA per C.F.R. § 800.2(a)(3), and is an invited signatory to this Agreement; and

WHEREAS, Section 6(f)(3) of the LWCF requires outdoor recreation sites that have received funding through LWCF to be managed for public outdoor recreation use in perpetuity; and

WHEREAS, a conversion of the original contractual grant agreements to change parcel(s) subject to LWCF requirements can only occur if NPS agrees the new sites are eligible under program requirements (reasonably equivalent usefulness, equal fair market value, and in accord with the Statewide Comprehensive Outdoor Recreation Plan (SCORP)), as further explained in 36 C.F.R. Part 59; and

WHEREAS, the CITY, after notice and public hearings required by State and local law, approved a private development project of DeReef Park, in January 2008; and

WHEREAS, NPS has determined the private development project did not meet NPS' definition of public outdoor recreation, and therefore, requires a conversion in accordance with Section 6(f)(3) and 36 C.F.R. Part 59.3; and



WHEREAS, the private development project ultimately required the relocation of the "Sons and Daughters of Joseph No. 9 Mission" chapel or praise house to a new location within the Park; and

WHEREAS, in 2008, the SCPRT, on behalf of the CITY, received approval from NPS for the conversion of DeReef Park including a replacement park; and

WHEREAS, in 2014, due to a lawsuit contesting the approval of the conversion of DeReef Park, the United States District Court granted NPS' motion for a voluntary remand for the reconsideration of its 2008 approval of the conversion in order to initiate a new evaluation of the National Environmental Policy Act and the NHPA; and

WHEREAS, the SCPRT, on behalf of the CITY, has been advised to submit to NPS a new partial conversion proposal with delayed replacement for review and approval; and

WHEREAS, for the approval of the partial conversion of DeReef Park, the CITY is being required to secure other replacement property that meets the requirements of Section 6(f)(3) and 36 C.F.R Part 59.3(b)(9)(c) within one year of the date of NPS approval of the partial conversion; and

WHEREAS, the selection of replacement property is the responsibility of the SCPRT in conjunction with the CITY, who may propose any site(s), including those already in public outdoor recreation, but which have been used for such purpose only after January 17, 2008 to the present; and

WHEREAS, NPS, in regards to the replacement property, will consider any potential effects to properties eligible for, or listed in, the National Register of Historic Places (NHRP) as of the date of approval of the partial conversion, including any additional development that NPS might require to satisfy equivalent recreation utility associated with this conversion (See Stipulation IV). Should adverse effects result from any additional development on a replacement property required by NPS in order for it to be eligible as replacement, NPS will comply with the requirements of Section 106, if the adverse effects cannot be avoided; and

WHEREAS, the approval of a partial conversion constitutes an undertaking as defined in 36 C.F.R. §800.16(y), and thus is subject to review under Section 106 of the NHPA. (54 U.S.C. § 306108); and

WHEREAS, NPS identified the South Carolina State Historic Preservation Office (SHPO), the Catawba Indian Nation, the Preservation Society of Charleston, Cannonborough-Elliottborough Neighborhood Association (CENA), the Friends of DeReef Park, the Gathering at Morris Square LLC, the CITY, and SCPRT as consulting parties to be involved in the Section 106 process (36 C.F.R. 800.2(c)); and

WHEREAS, the Catawba Indian Nation was invited to participate in Section 106 consultation, but declined; and

WHEREAS, the area of potential effect (APE) for this undertaking includes all portions of DeReef Park subject to Section 6(f)(3) requirements and, at the request of the Advisory Council on Historic Preservation (ACHP), the geographic area immediately surrounding DeReef Park bounded by Morris, Jasper, Cannon and Felix Streets (as generally depicted on Appendix A); and

WHEREAS, NPS held a Section 106 consultation meeting in Charleston, South Carolina on April 27, 2015; and

WHEREAS, NPS identified the expansion of the Charleston Old and Historic District, eligible for listing in the NRHP, as a historic property within the APE; and

WHEREAS, NPS identified the praise house as a contributing resource to the expansion of the eligible Charleston Old and Historic District in the APE; and

WHEREAS, in addition to the SHPO, the SCPRT and the CITY, NPS has consulted with, the Preservation Society of Charleston, CENA, the Friends of DeReef Park, and the Gathering at Morris Square LLC, regarding the effects of the undertaking on historic properties, and has invited them to be concurring parties to this Agreement but without the authority to amend, enforce or terminate this Agreement pursuant to 36 C.F.R. § 800.6(c)(3); and

WHEREAS, NPS has determined that the previous relocation of the praise house is an adverse effect on historic properties; and

WHEREAS, NPS has notified the ACHP of the finding of adverse effect pursuant to 36 C.F.R. § 800.6(a)(1), and the ACHP determined that its participation in the Section 106 consultation is warranted; and

WHEREAS, NPS held a second Section 106 consultation meeting in Charleston, South Carolina on October 26, 2015, to resolve adverse effects; and

WHEREAS, the consulting parties developed this Programmatic Agreement pursuant to Section 106 of the NHPA, and 36 C.F.R. 800.14(b)(3); and

WHEREAS, NPS, SHPO, and ACHP, are signatory parties with authority to execute, amend or terminate this Programmatic Agreement pursuant to 36 C.F.R. § 800.6(c)(1), and SCPRT and CITY are the invited signatory parties pursuant to 36 C.F.R. § 800.6(c)(2) who have the authority to amend and terminate this Programmatic Agreement.

NOW, THEREFORE, NPS, ACHP, SHPO, SCPRT and the CITY agree the undertaking shall be carried out in accordance with the following Stipulations in order to take into account the effect of the undertaking on historic properties, and that these Stipulations will govern the undertaking and all of its parts until this Agreement expires or is terminated.

### **STIPULATIONS**

NPS, in coordination with the SCPRT and the CITY, shall ensure that the following measures are carried out:

#### **I. PROFESSIONAL QUALIFICATIONS STANDARDS**

The CITY will fund and ensure that all work carried out pursuant to this Agreement shall be done by or under the direct supervision of historic preservation professionals who meet the Secretary of the Interior's Professional Qualifications Standards. The CITY will ensure that consultants retained for services pursuant to the Agreement meet these standards.

#### **II. REHABILITATION OF THE PRAISE HOUSE**

The CITY will complete the rehabilitation of the praise house in accordance with the plans dated September 1996, by George D. Dowis, AIA that have been updated to conform to current building code requirements, attached hereto as Appendix B. The rehabilitation shall not require the praise house to be relocated to its original location. The CITY will complete the rehabilitation within one year of the date of NPS approval of the partial conversion, unless otherwise agreed by NPS and the SHPO.

### III. RESEARCH, SURVEY, AND INTERPETATION MEASURES

a. The CITY will conduct background research and an architectural field survey of properties adjacent to DeReef Park and within the APE in order to establish an historic context and evaluate properties eligibility for listing in the NHRP (36 C.F.R. Part 60). Survey documentation will meet or exceed the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation* and the SHPO's Survey Manual: Statewide Survey of Historic Properties. The CITY will complete the survey and provide draft documentation in an electronic format to the SHPO and NPS within one year of the execution of this Agreement. The SHPO and NPS will have thirty days to provide review and comment. If the SHPO and NPS does not comment within the 30-day review period, the City will presume the SHPO and NPS concur. If comments are received, the CITY will provide final survey documentation to the SHPO and NPS within three months of the date of receipt of the SHPO's and NPS's comments. The survey report's research and historic context should seek to assist in the development of content (historic themes, persons, events, images, oral history interviews, etc.) for the waysides, as hereafter described.

b. The CITY will coordinate two public meetings for acquiring oral histories of resident and community member experiences related to the Cannonborough-Elliottborough/Radcliffeborough neighborhood, including DeReef Park, within six months of the execution of this Agreement. In addition to general notice to the public, specific notice will be given to residents adjacent to DeReef Park and to local institutions including the Avery Research Center at the College of Charleston, churches, and organizations who may have conducted oral histories or have local knowledge of DeReef Park and surrounding area. The NPS will assist the CITY in organizing and directing the meetings. At the meetings, in addition to presenting oral histories, attendees may share information by providing photographs, letters, or other documents related to the history of the neighborhood. The CITY will issue a report describing the oral histories and other information gathered at the meetings within three months of the second public meeting. The report will be available to the public and will be considered in the development of the content for the wayside(s).

c. An interpretive wayside or waysides will be erected at DeReef Park at an exterior site that is visible from Morris Street and/or DeReef Court. The wayside(s) will recognize persons or events associated with DeReef Park and convey the history of DeReef Park, the Praise House, and the neighborhood. The CITY will provide a draft design of the interpretative wayside(s) that includes proposed text, images and any additional design elements for the exhibit to the SHPO and NPS within twenty months of the date of

execution of this Agreement. The SHPO and the NPS will have thirty days to provide review and comment. If the SHPO and the NPS do not comment within the 30-day review period, the CITY will presume the SHPO and NPS concur. If comments are received, the CITY will provide a final draft of the wayside(s) exhibit within two months of the date of receipt of the SHPO or NPS's comments, whichever is later. The CITY will install the wayside(s) exhibit no later than thirty months of the date of execution of this Agreement.

d. Information documented per Stipulation IIIa. and b. will be posted to the CITY's website.

e. NPS will notify concurring parties when documents are shared with SHPO and NPS and will allow concurring parties to review and comment within NPS's 30-day review and comment period. NPS will consolidate all comments and provide to the CITY.

#### **IV. REPLACEMENT PROPERTY**

The identified replacement property will include consultation between the NPS, SHPO, SCPRT and the CITY for compliance with Section 106 of NHPA (54 U.S.C. 306108) and its implementing regulations (36 C.F.R. Part 800).

#### **V. POST-REVIEW DISCOVERIES**

If potential historic properties are discovered or unanticipated effects on historic properties occur as a result of the activities covered under the terms of this Agreement, the NPS shall require the SCPRT and the CITY to implement the unanticipated discovery plan appended to this Agreement (Appendix C). In the event that historic properties are identified, and/or unanticipated effects to historic properties are found, NPS will follow the provisions outlined in 36 C.F.R. § 800.13.

#### **VI. MONITORING AND REPORTING**

Each year following the execution of this Agreement, and until it expires or is terminated, the CITY shall provide a summary report to SCPRT detailing the progress of each Stipulation in this Agreement, and the proposed timeline for completion of each Stipulation. The report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections in efforts to carry out the terms of this Agreement. The report will be due on the one year anniversary of the effective date of this Agreement. SCPRT shall provide all signatories including concurring parties to this Agreement a copy of the summary report within 30 calendar days of receipt from the CITY.

#### **VII. DISPUTE RESOLUTION**

Signatories to this Agreement with rights of enforcement, amendment and termination are the NPS, ACHP, SCPRT, SHPO and the CITY (the "Signatory" or "Signatories").

Should any Signatory object in writing to SCPRT at any time to any actions proposed or the manner in which the terms of this Agreement are implemented, SCPRT shall initiate consultation within 10 days

with such party to resolve the objection. The SCPRT will inform NPS of any objections. If SCPRT determines that such objection cannot be resolved, SCPRT will:

- a. Contact NPS who will forward all documentation relevant to the dispute, including the SCPRT's proposed resolution, to the ACHP and the SHPO. The ACHP and the SHPO shall provide NPS with its advice on the resolution of the objection within thirty days of receiving adequate documentation. Prior to reaching a final decision on the dispute, NPS shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP and the SHPO, or Signatory parties, and provide that response to Signatories and concurring parties. NPS will then proceed according to its final decision.
- b. If the ACHP and the SHPO does not provide advice regarding the dispute within the thirty day time period, NPS may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, NPS shall prepare a written response that takes into account any timely comments regarding the dispute from the Signatory's objection and SCPRT's proposed resolution provide that response to Signatories and concurring parties. NPS will then proceed according to its final decision.
- c. Should the CITY determine that it does not have sufficient funds to cover such costs, the CITY shall notify the SCPRT in writing, and the SCPRT will follow the dispute resolution process identified in Section VII to determine how to address the predicted shortfall.
- d. NPS' responsibilities to carry out all other actions subject to the terms of this Agreement that are not the subject of the dispute remain unchanged.

#### **VIII. AMENDMENT AND TERMINATION**

- a. This Agreement may be amended only by a written instrument executed by the Signatories. The Signatory proposing the amendment must consult with the other Signatories to the Agreement for at least 30 days after the amendment is proposed. If all Signatories agree to the terms of the amendment, NPS shall prepare the amendment and circulate it for signature by the Signatories. The amendment will be effective on the date it is signed by all of the Signatories, including the ACHP.
- b. If any Signatory to this Agreement determines that the terms of this Agreement will not, or cannot, be carried out, that Signatory shall immediately consult with the other Signatories by written instrument to attempt to develop an amendment. If, within sixty calendar days an agreement to amend this Agreement cannot be reached by the Signatories, any Signatory may request to terminate the Agreement upon written concurrence of all other Signatories.
- c. Once the Agreement is terminated, and prior to work continuing on the undertaking, NPS must either (a) execute a new Agreement pursuant to 36 C.F.R. § 800.6; or (b) if ACHP has provided advice per Stipulation VII: Dispute Resolution, request, take into account,

and respond to the comments of the ACHP under 36 C.F.R. § 800.7. NPS shall notify the Signatories regarding the course of action it will pursue.

#### **IX. EFFECTIVE DATE AND DURATION**

- a. This Agreement becomes effective upon approval by NPS of the partial conversion per Section 6(f)(3) of the LWCF Act. All parties (Signatories and concurring) will be notified in writing by NPS within five (5) business days of the effective date. NPS shall determine when the terms of the Agreement have been fulfilled.
- b. If the SCPRT and/or the CITY fails to complete all of the terms in this Agreement within five years from the effective date, NPS will determine whether additional time will be allowed, or whether an amendment of the Agreement will be permitted pursuant to Stipulation VIII of this Agreement.
- c. At any time during the term of this Agreement, NPS may consult with the Signatories to reconsider the terms of the Agreement and amend it as per Stipulation VIII. All consulting parties must be notified that NPS is consulting to reconsider the terms of the PA or to amend a Stipulation.

#### **X. EXECUTION**

Execution of this Agreement by the NPS, the ACHP, SHPO, SCPRT, and the CITY, and implementation of its terms evidence that NPS has considered the effects of this undertaking on historic properties.

#### **XI. SPECIAL PROVISIONS**

- a. Nothing in this Agreement shall be interpreted or construed as a commitment or requirement that the NPS obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable law or regulation.
- b. Except as expressly provided herein, nothing in this Agreement shall be construed to limit or modify the NPS' discretion under any applicable laws or regulations.
- c. The signatures below on this Agreement express the entire agreement among the parties. The parties acknowledge and agree that they have read and understand this entire Agreement including, but not limited to, any Exhibits attached hereto and incorporated herein by reference.
- d. It is further mutually agreed that no Member of or Delegate to Congress, shall be admitted to any share or part of this Agreement, or to any benefit to arise thereupon.
- e. Nothing herein shall be construed or interpreted to create any rights to concurring parties concerning the amendment, enforcement, construction or termination of this Agreement.

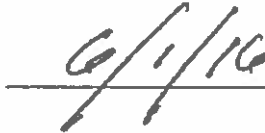
**SIGNATORY PAGE**  
**PROGRAMMATIC AGREEMENT**  
**AMONG**  
**THE NATIONAL PARK SERVICE**  
**AND THE**  
**SOUTH CAROLINA STATE HISTORIC PRESERVATION OFFICE**  
**THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**  
**SOUTH CAROLINA DEPARTMENT OF PARKS, RECREATION, AND TOURISM**  
**THE CITY OF CHARLESTON, SOUTH CAROLINA**  
**OTHER CONSULTING PARTIES**  
**REGARDING**  
**SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT**  
**FOR THE CONVERSION OF A PORTION OF DEREEF PARK**

National Park Service

By:

  
Stan Austin, Regional Director

Date:

  
6/1/16

SIGNATORY PAGE  
PROGRAMMATIC AGREEMENT  
AMONG  
THE NATIONAL PARK SERVICE  
AND THE  
SOUTH CAROLINA STATE HISTORIC PRESERVATION OFFICE  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION  
SOUTH CAROLINA DEPARTMENT OF PARKS, RECREATION, AND TOURISM  
THE CITY OF CHARLESTON, SOUTH CAROLINA  
OTHER CONSULTING PARTIES  
REGARDING  
SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT  
FOR THE CONVERSION OF A PORTION OF DEREEF PARK

South Carolina State Historic Preservation Officer

By:



Dr. W. Eric Emerson,  
South Carolina State Historic Preservation Officer

Date:

5-26-16



**SIGNATORY PAGE**  
**PROGRAMMATIC AGREEMENT**  
**AMONG**  
**THE NATIONAL PARK SERVICE**  
**AND THE**  
**SOUTH CAROLINA STATE HISTORIC PRESERVATION OFFICE**  
**THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**  
**SOUTH CAROLINA DEPARTMENT OF PARKS, RECREATION, AND TOURISM**  
**THE CITY OF CHARLESTON, SOUTH CAROLINA**  
**OTHER CONSULTING PARTIES**  
**REGARDING**  
**SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT**  
**FOR THE CONVERSION OF A PORTION OF DEREEF PARK**

Advisory Council on Historic Preservation

By:

  
John Fowler, Executive Director

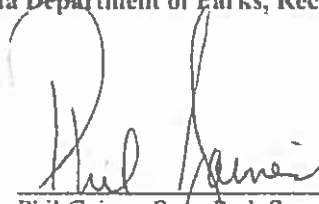
Date:

5/27/16

SIGNATORY PAGE  
PROGRAMMATIC AGREEMENT  
AMONG  
THE NATIONAL PARK SERVICE  
AND THE  
SOUTH CAROLINA STATE HISTORIC PRESERVATION OFFICE  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION  
SOUTH CAROLINA DEPARTMENT OF PARKS, RECREATION, AND TOURISM  
THE CITY OF CHARLESTON, SOUTH CAROLINA  
OTHER CONSULTING PARTIES  
REGARDING  
SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT  
FOR THE CONVERSION OF A PORTION OF DEREEF PARK

South Carolina Department of Parks, Recreation and Tourism (Invited Signatory)

By:

  
\_\_\_\_\_  
Phil Gaines, State Park Service  
State Liaison Officer

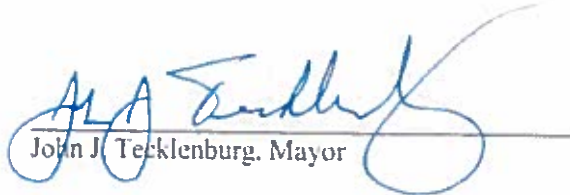
Date:

5/31/16

SIGNATORY PAGE  
PROGRAMMATIC AGREEMENT  
AMONG  
THE NATIONAL PARK SERVICE  
AND THE  
SOUTH CAROLINA STATE HISTORIC PRESERVATION OFFICE  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION  
SOUTH CAROLINA DEPARTMENT OF PARKS, RECREATION, AND TOURISM  
THE CITY OF CHARLESTON, SOUTH CAROLINA  
OTHER CONSULTING PARTIES  
REGARDING  
SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT  
FOR THE CONVERSION OF A PORTION OF DEREEF PARK

The City of Charleston, South Carolina (Invited Signatory)

By:

  
John J. Tecklenburg, Mayor

Date:

May 25, 2016

**SIGNATORY PAGE**  
**PROGRAMMATIC AGREEMENT**  
**AMONG**  
**THE NATIONAL PARK SERVICE**  
**AND THE**  
**SOUTH CAROLINA STATE HISTORIC PRESERVATION OFFICE**  
**THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**  
**SOUTH CAROLINA DEPARTMENT OF PARKS, RECREATION, AND TOURISM**  
**THE CITY OF CHARLESTON, SOUTH CAROLINA**  
**OTHER CONSULTING PARTIES**  
**REGARDING**  
**SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT**  
**FOR THE CONVERSION OF A PORTION OF DEREEF PARK**

**Friends of DeReef Park (Concurring Party)**

**By:**

\_\_\_\_\_  
Heather Templeton, Co-Chairman

**Date:**

\_\_\_\_\_

**SIGNATORY PAGE**  
**PROGRAMMATIC AGREEMENT**  
**AMONG**  
**THE NATIONAL PARK SERVICE**  
**AND THE**  
**SOUTH CAROLINA STATE HISTORIC PRESERVATION OFFICE**  
**THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**  
**SOUTH CAROLINA DEPARTMENT OF PARKS, RECREATION, AND TOURISM**  
**THE CITY OF CHARLESTON, SOUTH CAROLINA**  
**OTHER CONSULTING PARTIES**  
**REGARDING**  
**SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT**  
**FOR THE CONVERSION OF A PORTION OF DEREEF PARK**

**Cannonborough-Elliotborough Neighborhood Association (Concurring Party)**

**By:**

\_\_\_\_\_  
Cator Sparks, President

**Date:**

\_\_\_\_\_

**SIGNATORY PAGE**  
**PROGRAMMATIC AGREEMENT**  
**AMONG**  
**THE NATIONAL PARK SERVICE**  
**AND THE**  
**SOUTH CAROLINA STATE HISTORIC PRESERVATION OFFICE**  
**THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**  
**SOUTH CAROLINA DEPARTMENT OF PARKS, RECREATION, AND TOURISM**  
**THE CITY OF CHARLESTON, SOUTH CAROLINA**  
**OTHER CONSULTING PARTIES**  
**REGARDING**  
**SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT**  
**FOR THE CONVERSION OF A PORTION OF DEREEF PARK**

**Gathering at Morris Square, LLC (Concurring Party)**

**By:**

\_\_\_\_\_  
Chris Phillips, Jr., Member

**Date:**

\_\_\_\_\_

**APPENDIX A  
MAP OF PROPERTY**





02/11/2015 Pictometry Oblique Aerial  
provided by:

City of Charleston  
Department of Information Technology  
GIS Division



Praise House





## **APPENDIX B**

**Gathering @ Morris Square Church Building Construction Document November 08, 2013**

# GATHERING @ Morris Square CHURCH BUILDING

MORRIS STREET  
CHARLESTON, SC



## Architecture:



**SGA ARCHITECTURE**

Peninsula Island / Charleston

ARCHITECTURE LANDPLANNING  
LANDSCAPE ARCHITECTURE

1315 Hobby Street, Suite 204  
Charleston, SC 29405  
Phone (843) 853-4506  
www.SGAarchitecture.com

## Mechanical Engineering:

**Charleston Engineering, Inc.**

1258 Wapona Creek Drive  
Charleston, SC 29412  
(843) 763-4343

## Owner:

**GATHERING  
@ Morris Square, LLC**

P.O. Box 20992  
Charleston, SC 29413

DESIGNED BY ARCHITECTURAL GROUP  
FOR THE PROJECT OF  
GATHERING @ MORRIS SQUARE  
CHURCH BUILDING  
NOVEMBER 08, 2013  
SGA ARCHITECTURE  
1315 HOBBY STREET, SUITE 204  
CHARLESTON, SC 29405  
PHONE (843) 853-4506  
WWW.SGAARCHITECTURE.COM

CONSTRUCTION DOCUMENTS - NOVEMBER 08, 2013  
SGA ARCHITECTURE COMMISSION NO. 13002





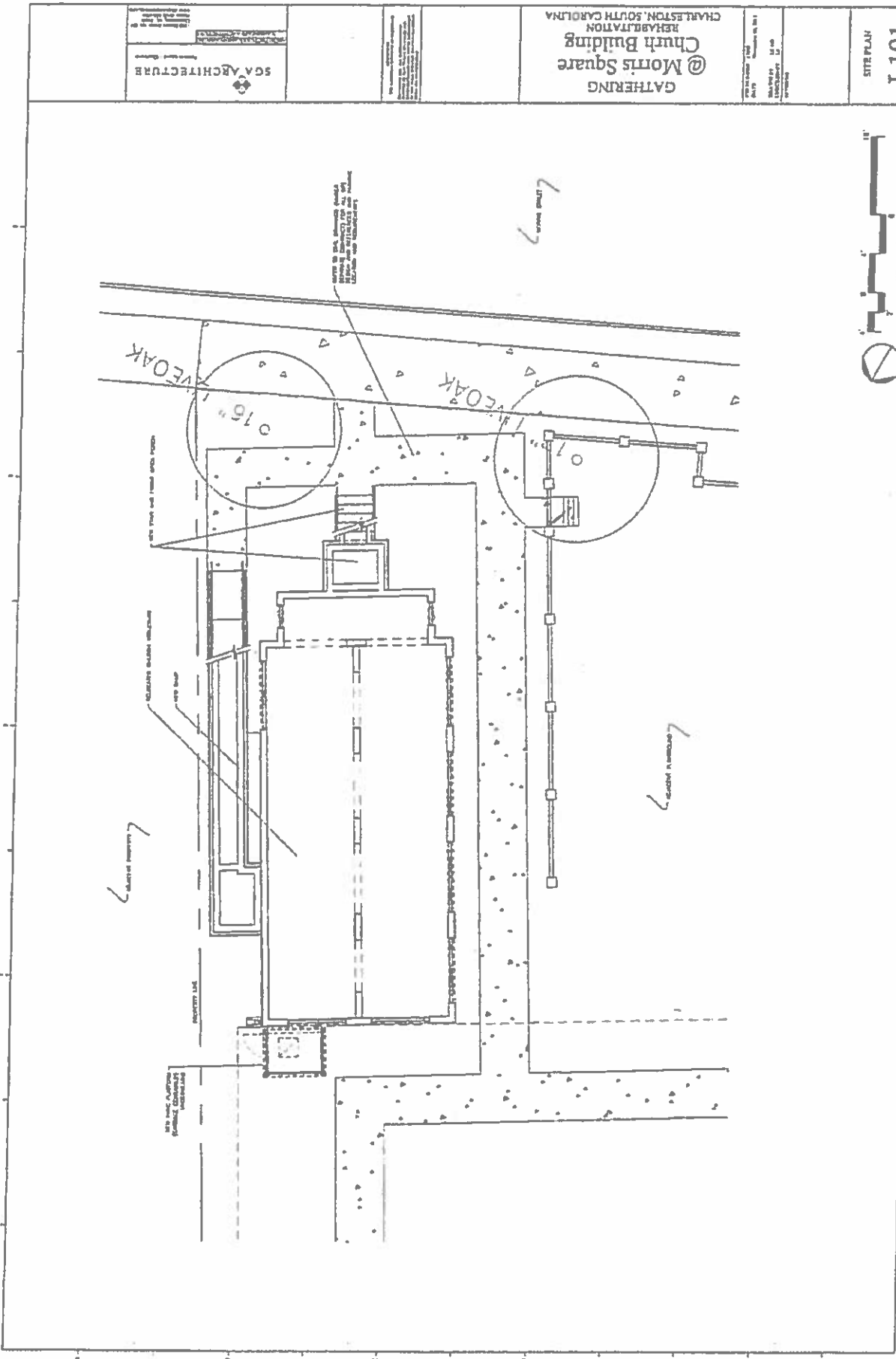
CHARLESTON, SOUTH CAROLINA

SITE PLAN  
L101

GATHERING  
@ Morris Square  
Church Building  
REHABILITATION  
CHARLESTON, SOUTH CAROLINA

SCA ARCHITECTURE  
ARCHITECTS

DATE: 10/1/01  
DRAWN BY: [illegible]  
CHECKED BY: [illegible]  
SCALE: 1/8" = 1'-0"



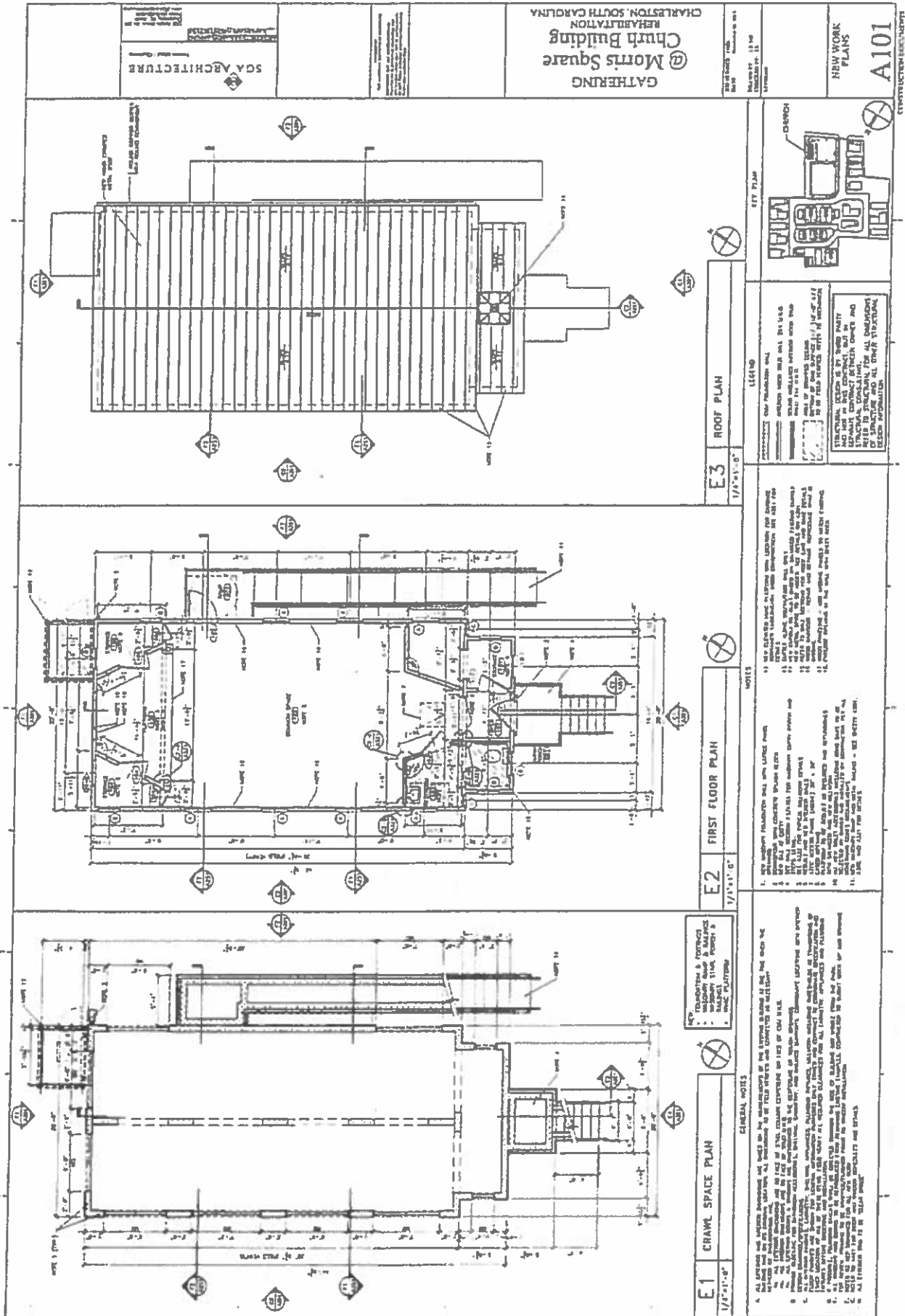








<div style="display: flex; justify-content: space-between;"> <div> <p><b>C1</b> FRONT (SOUTH/EAST) ELEVATION - DEMOLITION</p> <p>1/2" = 1' - 0"</p> </div> <div> </div> </div>		<div style="display: flex; justify-content: space-between;"> <div> <p><b>C2</b> SIDE (NORTH/EAST) ELEVATION - DEMOLITION</p> <p>1/2" = 1' - 0"</p> </div> <div> </div> </div>		<div style="display: flex; justify-content: space-between;"> <div> <p><b>F1</b> REAR (NORTH/WEST) ELEVATION - DEMOLITION</p> <p>1/2" = 1' - 0"</p> </div> <div> </div> </div>		<div style="display: flex; justify-content: space-between;"> <div> <p><b>F2</b> SIDE (SOUTH/WEST) ELEVATION - DEMOLITION</p> <p>1/2" = 1' - 0"</p> </div> <div> </div> </div>		<div style="display: flex; justify-content: space-between;"> <div> <p>REFER TO C1/F2/F1 &amp; C2/F2/F1 FOR TYPICAL DEMOLITION NOTES</p> </div> <div> <p>REFER TO C1/F2/F1 &amp; C2/F2/F1 FOR TYPICAL DEMOLITION NOTES</p> </div> </div>		<div style="display: flex; justify-content: space-between;"> <div> <p><b>D201</b></p> <p>DEMOLITION EXTERIOR ELEVATIONS</p> </div> <div> </div> </div>		<div style="display: flex; justify-content: space-between;"> <div> <p>DATE: 01/11/2021</p> <p>BY: [Signature]</p> </div> <div> <p>SCALE: 1/2" = 1' - 0"</p> </div> </div>		<div style="display: flex; justify-content: space-between;"> <div> <p><b>SCA ARCHITECTURE</b></p> <p>1000 1/2 STREET, SUITE 100, CHARLESTON, SOUTH CAROLINA 29403</p> </div> <div> <p><b>@ Morris Square</b></p> <p><b>Church Building</b></p> <p><b>REHABILITATION</b></p> <p><b>CHARLESTON, SOUTH CAROLINA</b></p> </div> </div>		<div style="display: flex; justify-content: space-between;"> <div> <p><b>GENERAL NOTES - DEMOLITION</b></p> <ol style="list-style-type: none"> <li>ALL EXISTING STRUCTURES TO BE DEMOLISHED AS SHOWN ON THESE ELEVATIONS.</li> <li>DEMOLITION SHALL BE ACCORDING TO THE FOLLOWING SEQUENCE:             <ol style="list-style-type: none"> <li>REMOVE ALL EXTERIOR FINISHES AND MATERIALS.</li> <li>REMOVE ALL INTERIOR FINISHES AND MATERIALS.</li> <li>REMOVE ALL STRUCTURAL MEMBERS, INCLUDING ROOF, FLOOR, AND WALLS.</li> <li>REMOVE ALL REMAINING MATERIALS AND DEBRIS.</li> </ol> </li> <li>DEMOLITION SHALL BE ACCORDING TO THE FOLLOWING SAFETY PRECAUTIONS:             <ol style="list-style-type: none"> <li>ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE OSHA SAFETY STANDARDS.</li> <li>ALL WORKERS SHALL BE PROPERLY TRAINED AND CERTIFIED.</li> <li>ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE PROJECT SAFETY PLAN.</li> </ol> </li> </ol> </div> <div> <p><b>DEMOLITION NOTES</b></p> <ol style="list-style-type: none"> <li>ALL EXISTING STRUCTURES TO BE DEMOLISHED AS SHOWN ON THESE ELEVATIONS.</li> <li>DEMOLITION SHALL BE ACCORDING TO THE FOLLOWING SEQUENCE:             <ol style="list-style-type: none"> <li>REMOVE ALL EXTERIOR FINISHES AND MATERIALS.</li> <li>REMOVE ALL INTERIOR FINISHES AND MATERIALS.</li> <li>REMOVE ALL STRUCTURAL MEMBERS, INCLUDING ROOF, FLOOR, AND WALLS.</li> <li>REMOVE ALL REMAINING MATERIALS AND DEBRIS.</li> </ol> </li> <li>DEMOLITION SHALL BE ACCORDING TO THE FOLLOWING SAFETY PRECAUTIONS:             <ol style="list-style-type: none"> <li>ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE OSHA SAFETY STANDARDS.</li> <li>ALL WORKERS SHALL BE PROPERLY TRAINED AND CERTIFIED.</li> <li>ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE PROJECT SAFETY PLAN.</li> </ol> </li> </ol> </div> </div>	
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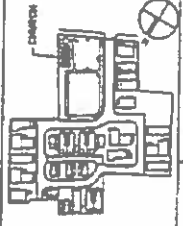
GATHERING  
@ Morris Square  
REHABILITATION  
CHARLESTON, SOUTH CAROLINA

SCA ARCHITECTURE

NEW WORK  
PLANS  
A101

DATE: 11-11-10  
BY: [Signature]  
CHECKED BY: [Signature]  
APPROVED BY: [Signature]

**A201**  
NEW WORK  
EXTERIOR  
ELEVATIONS



DATE: 11/11/11  
BY: [Signature]  
CHECKED BY: [Signature]  
SCALE: 1/8" = 1'-0"

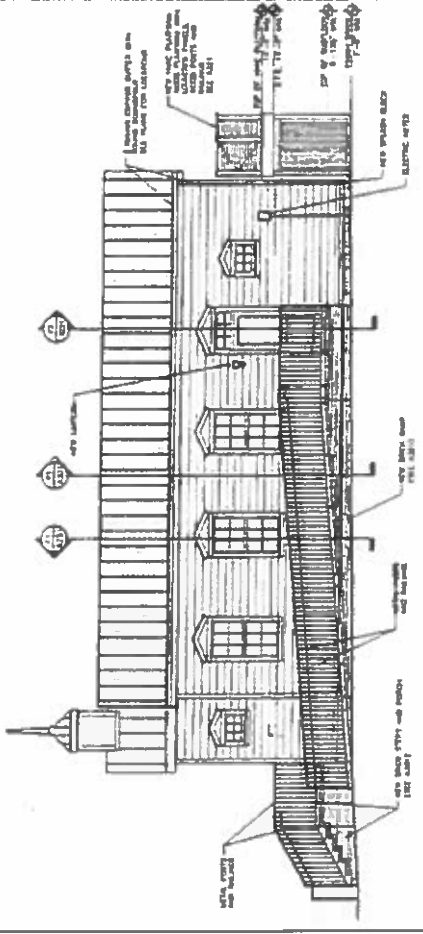
**GATHERING @ Morris Square**  
REHABILITATION  
CHARLESTON, SOUTH CAROLINA

**SCA ARCHITECTURE**  
1111 MARKET STREET, SUITE 200  
CHARLESTON, SOUTH CAROLINA 29403  
TEL: 771.444.4444  
WWW.SCA-ARCHITECTURE.COM

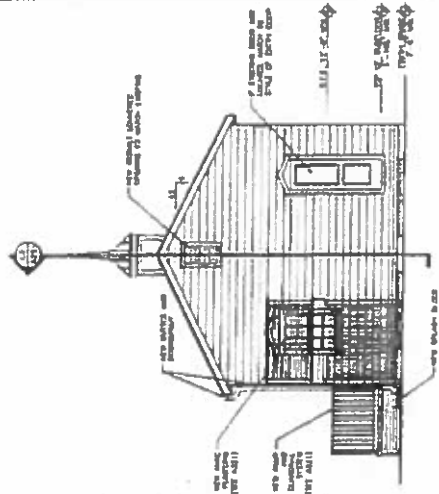
GENERAL NOTES

1. ALL DIMENSIONS UNLESS OTHERWISE NOTED ARE IN FEET AND INCHES.  
2. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE BUILDING CODES OF THE CITY OF CHARLESTON, SOUTH CAROLINA.

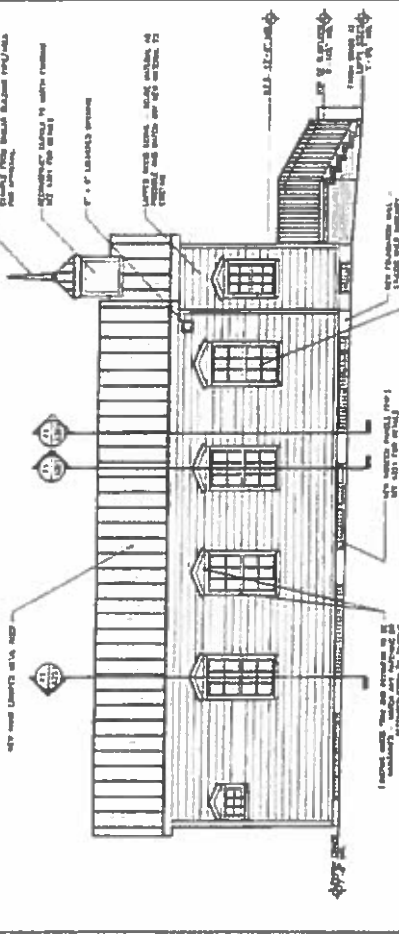
**F2** SIDE (SOUTHWEST) ELEVATION  
1/2" = 1'-0"



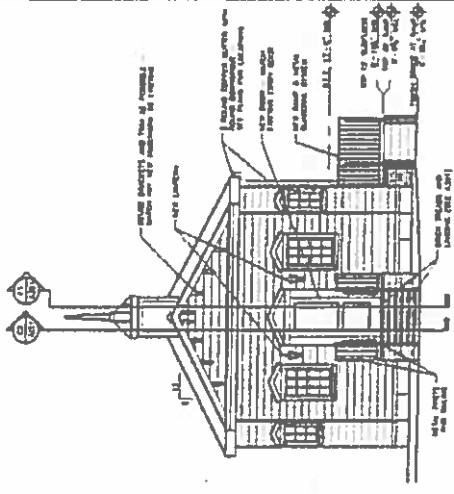
**F1** REAR (NORTHWEST) ELEVATION  
1/2" = 1'-0"



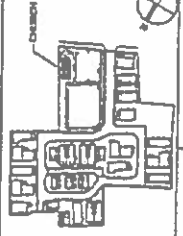
**C2** SIDE (NORTHEAST) ELEVATION  
1/2" = 1'-0"



**C1** FRONT (SOUTHEAST) ELEVATION  
1/2" = 1'-0"



**A251**  
NEW WORK  
BUILDING  
SECTIONS



DATE: 10/1/11  
BY: [Signature]  
CHECKED BY: [Signature]  
PROJECT NO.: 11-0000

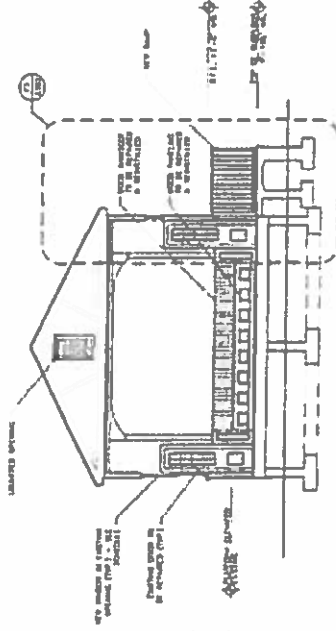
**GATHERING @ Morris Square**  
Church Building  
REHABILITATION  
CHARLESTON, SOUTH CAROLINA

SEALED: 10/1/11  
BY: [Signature]  
CHECKED BY: [Signature]  
PROJECT NO.: 11-0000

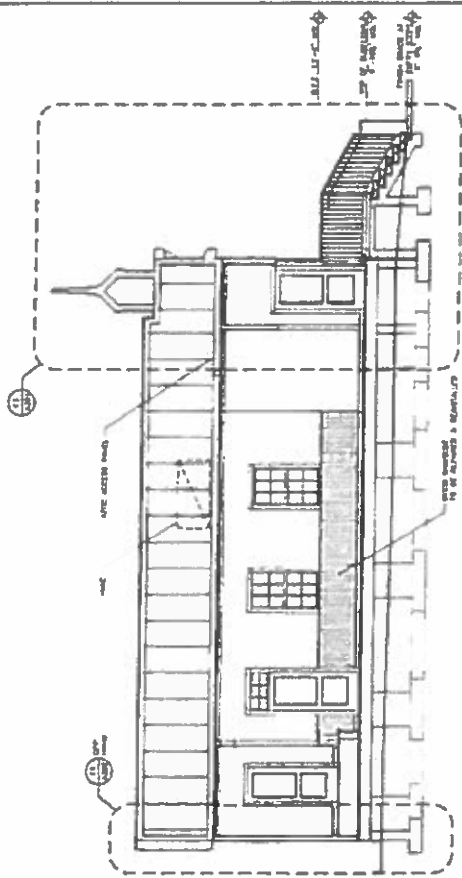
**SEA ARCHITECTURE**  
110 South Main Street  
Charleston, SC 29401  
Tel: 771-1111  
Fax: 771-1112  
www.sea-architect.com

NOTES

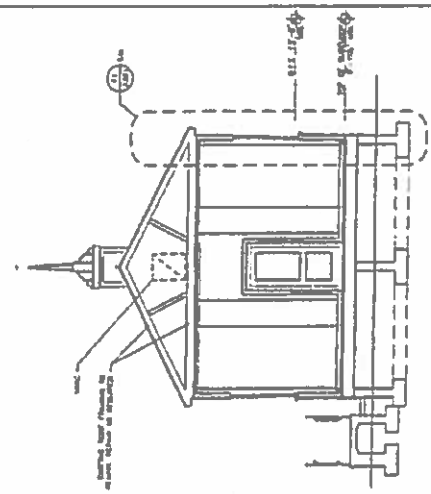
**F2 BUILDING SECTION**  
1/4" = 1'-0"



**C2 BUILDING SECTION**  
1/8" = 1'-0"



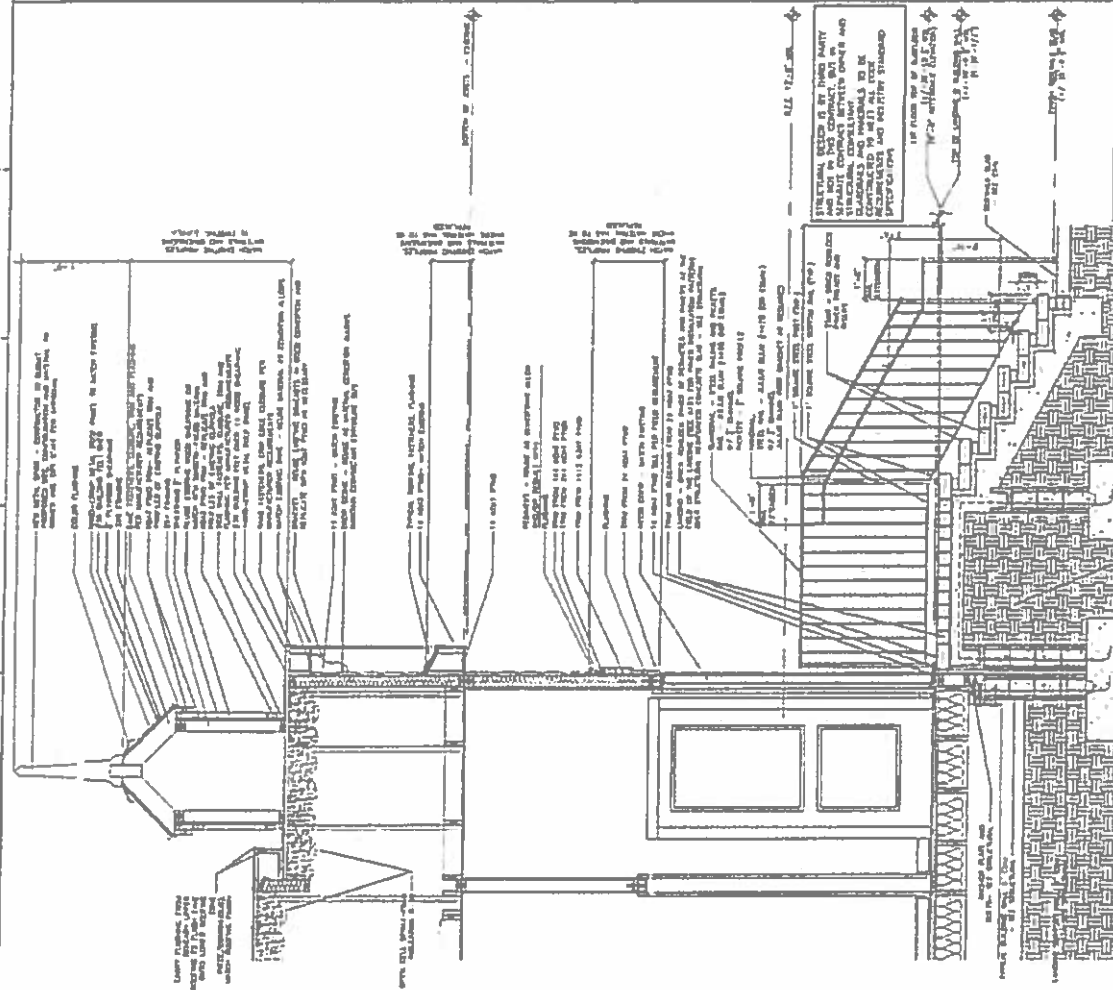
**F1 BUILDING SECTION**  
1/4" = 1'-0"



GATHERING  
@ Morris Square  
Church Building  
REHABILITATION  
CHARLESTON, SOUTH CAROLINA

SEA ARCHITECTURE  
1000 1/2 STREET  
NORTH CHARLESTON, SOUTH CAROLINA 29403  
TEL: 771-1111  
FAX: 771-1112

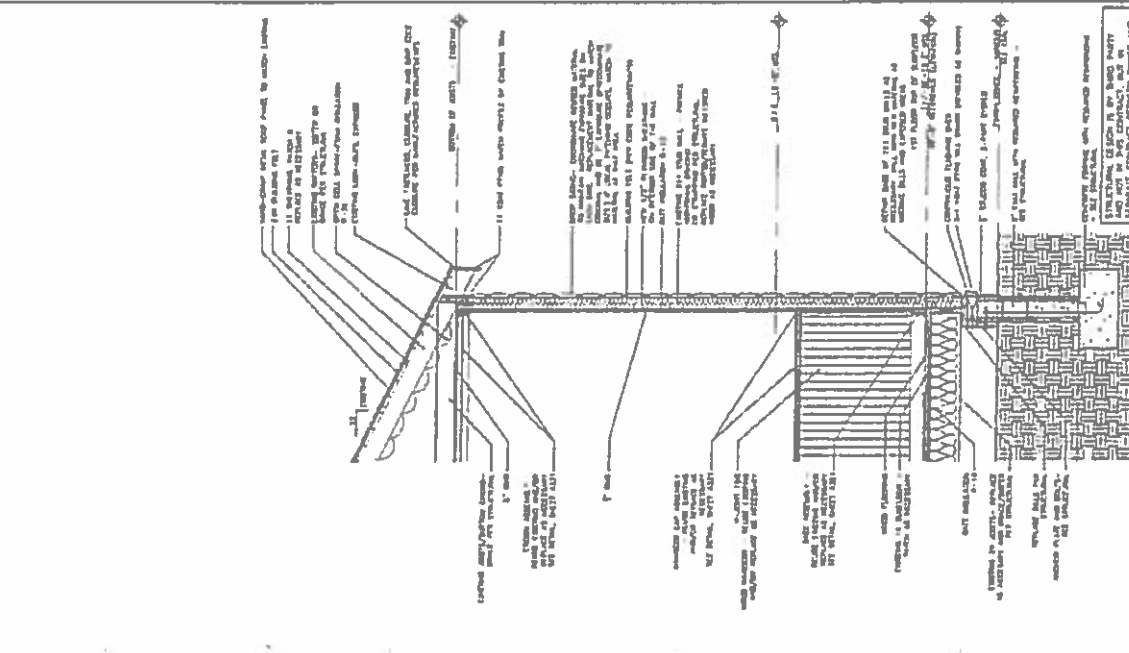
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STRUCTURAL CONSULTING FIRM. THE  
FIRM HAS NOT BEEN LICENSED TO  
PREPARE OR SEAL ANY OF THE  
DETAILS INFORMATION.



F3 SECTION AT ENTRY

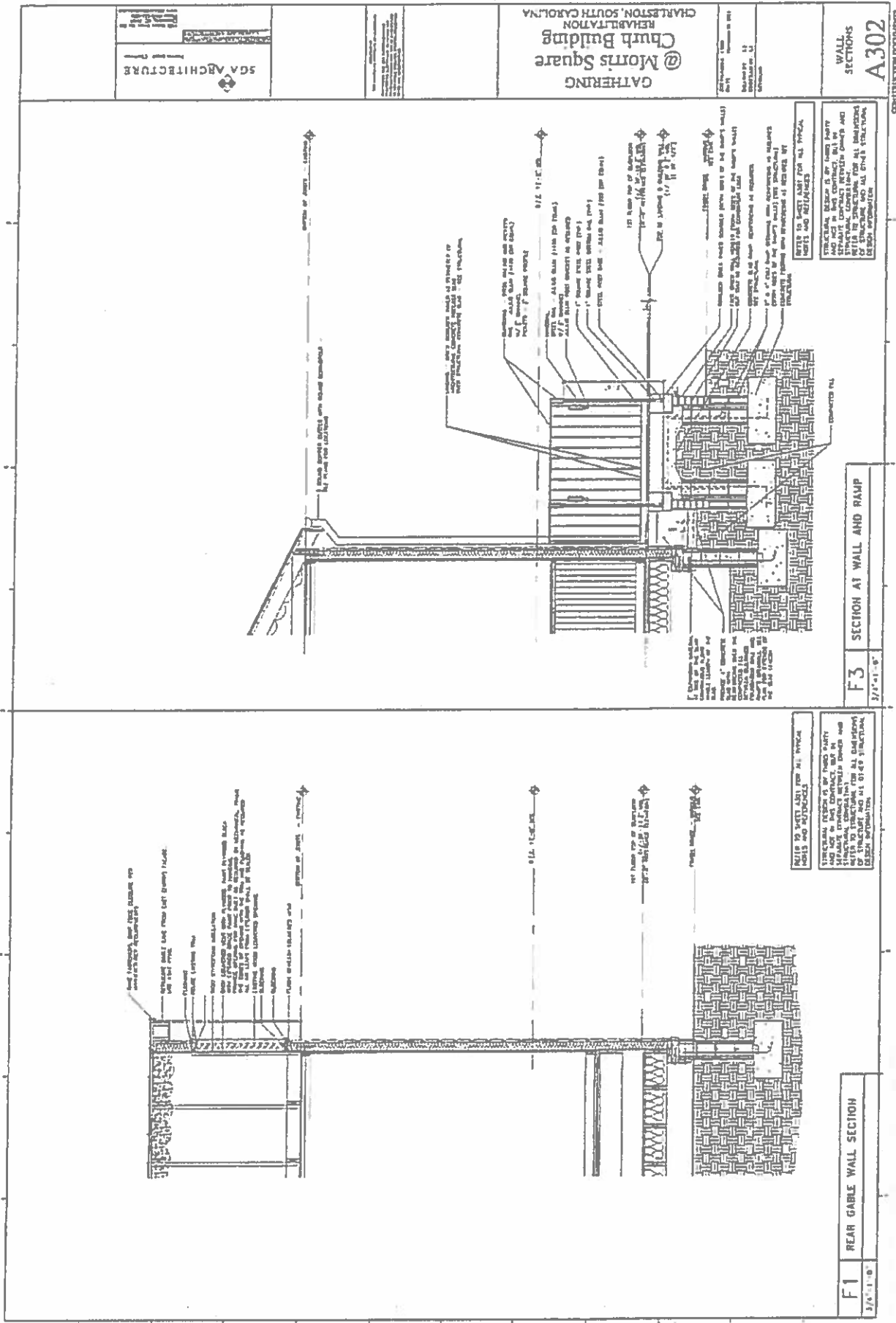
1/4" = 1' 0"

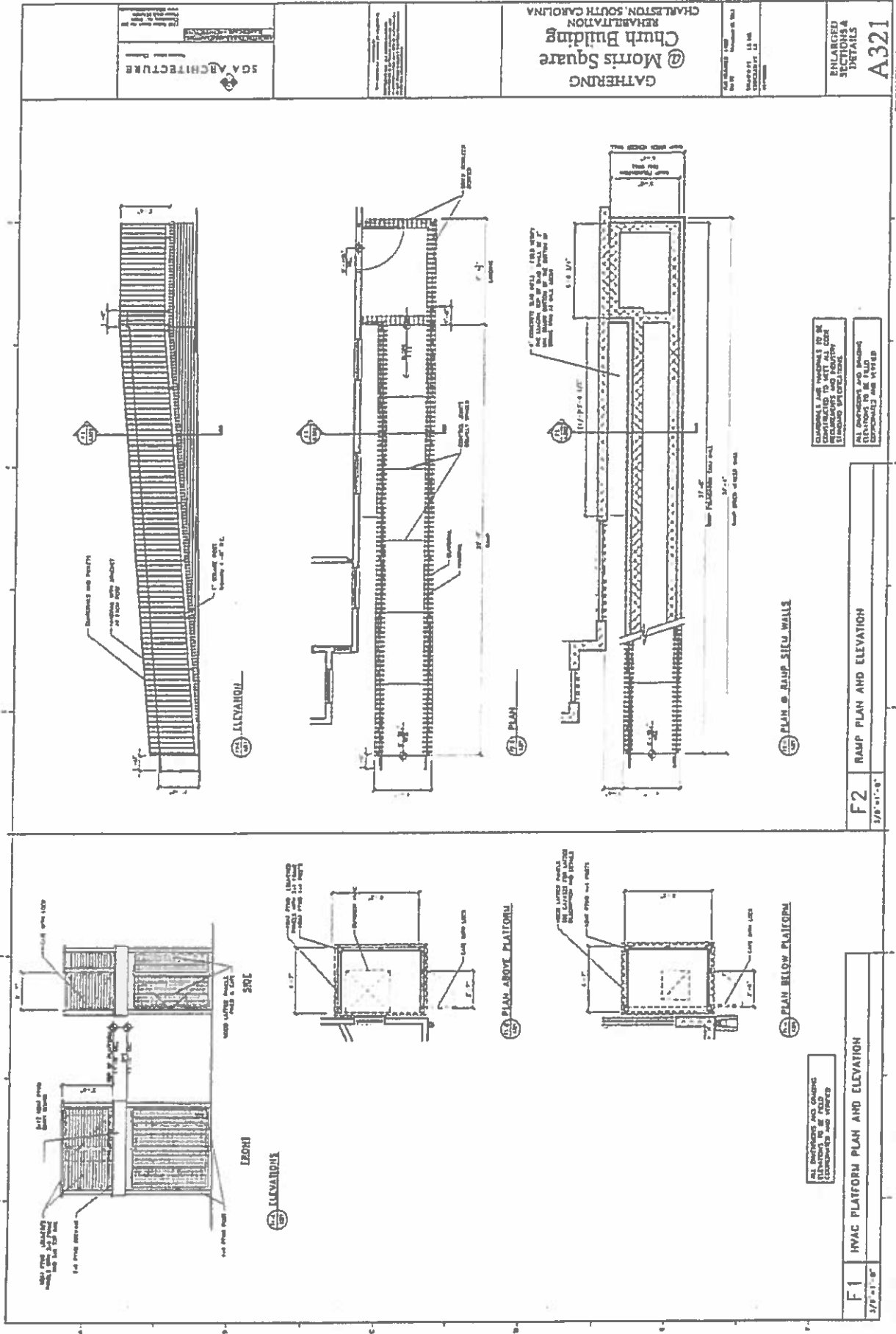
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STRUCTURAL CONSULTING FIRM. THE  
FIRM HAS NOT BEEN LICENSED TO  
PREPARE OR SEAL ANY OF THE  
DETAILS INFORMATION.



F1 TYPICAL WALL SECTION

1/4" = 1' 0"






**GATHERING  
@ Morris Square  
Church Building  
REHABILITATION  
CHARLESTON, SOUTH CAROLINA**

[illegible]

THE UNIVERSITY OF CHICAGO  
CHICAGO, ILL. 60637  
U.S.A.  
TEL: 773/936-5000  
FAX: 773/936-5000

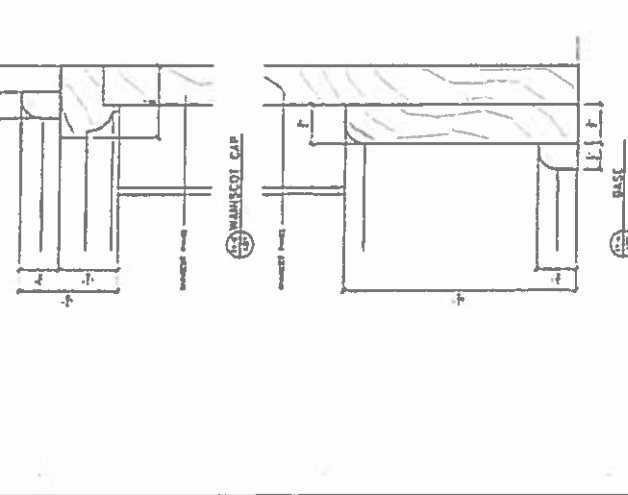
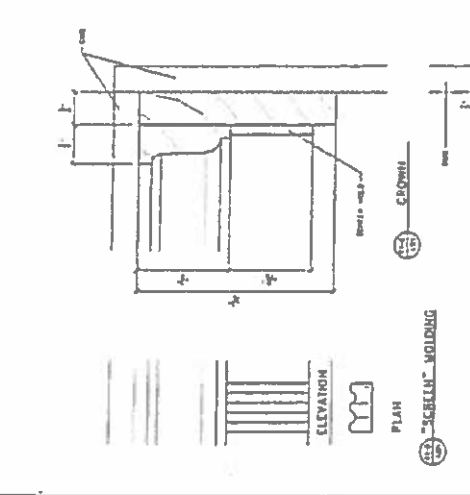
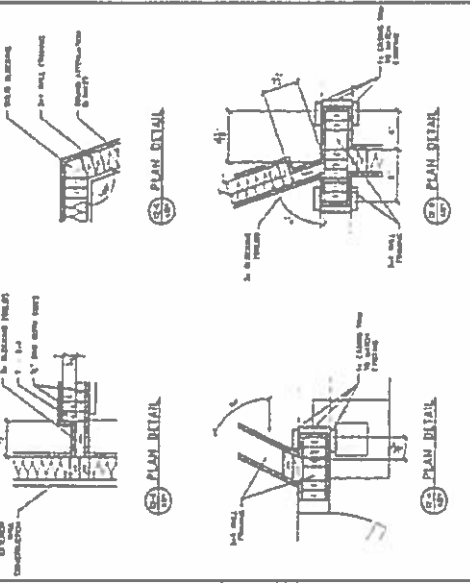
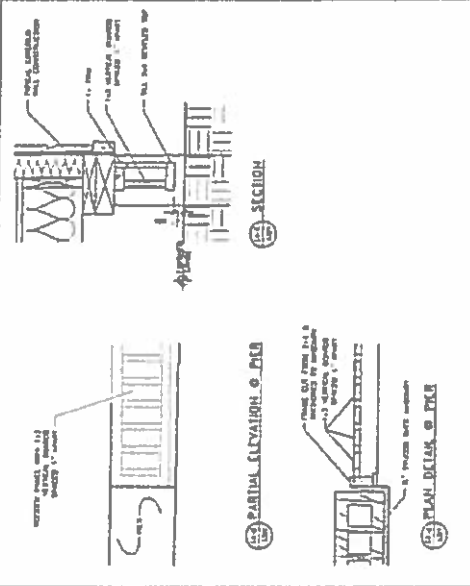


SOA ARCHITECTURE

441 (1) 11/11/11 11:11 11 11  
441 (1) 11/11/11 11:11 11 11  
441 (1) 11/11/11 11:11 11 11  
441 (1) 11/11/11 11:11 11 11

C4	WOODEN PANEL DETAILS
----	----------------------

C2	INTERIOR WALL TRANSACTIONS DETAILS AT PLAN VIEW
1/2"=1'-0"	







WINDOW FLASHING  
A402

DATE: 11/11/11  
BY: [Signature]  
PROJECT: [Signature]

GATHERING  
@ Morris Square  
Church Building  
REHABILITATION  
CHARLESTON, SOUTH CAROLINA

30A ARCHITECTURE  
1000 1/2 STREET, N.E.  
ATLANTA, GA 30316  
PHONE: 404.525.1000  
WWW.30AARCHITECTURE.COM

GENERAL NOTE

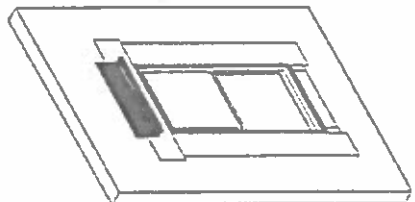
1. DRAWING IS TO BE USED FOR THE ENTIRE PROJECT.

NOTES

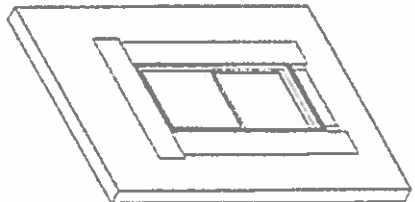
G1 WINDOW FLASHING SEQUENCE

11/11

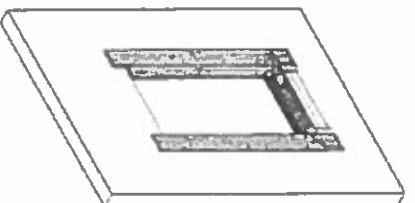
1. INSTALL WINDOW FLASHING AS SHOWN.



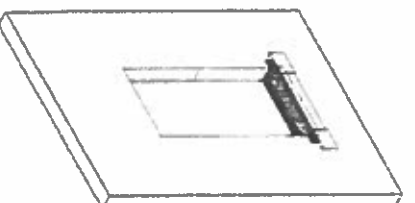
2. INSTALL SECOND FLASHING LAYER AS SHOWN.



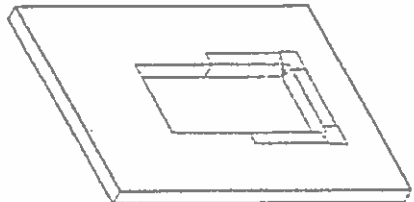
3. INSTALL THIRD FLASHING LAYER AS SHOWN.



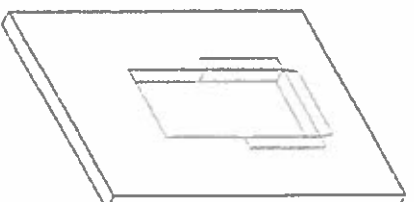
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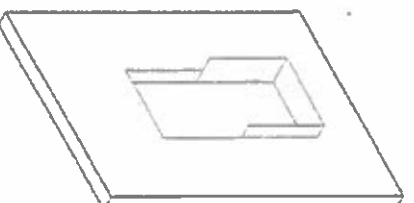
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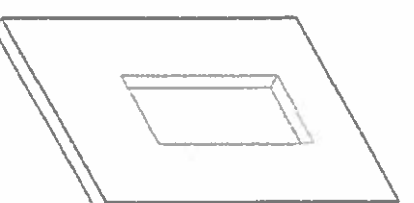
6. INSTALL WINDOW FLASHING AS SHOWN.

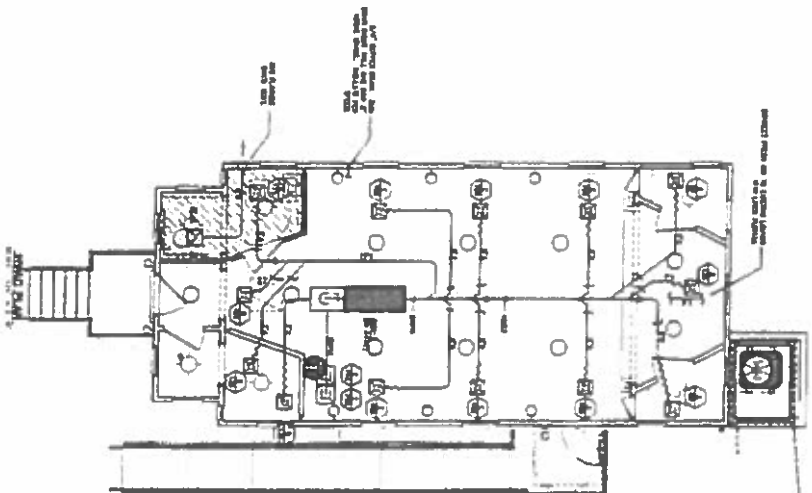


7. INSTALL WINDOW FLASHING AS SHOWN.



8. INSTALL WINDOW FLASHING AS SHOWN.





NOTES: 1. The existing building is to be rehabilitated and the HVAC system is to be replaced. 2. The existing building is to be rehabilitated and the HVAC system is to be replaced. 3. The existing building is to be rehabilitated and the HVAC system is to be replaced.

**Opt. System Heat Pump Schedule**

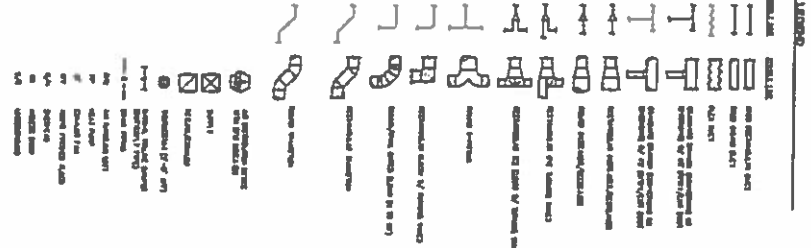
Room	Room No.	Room Name	Area (sq. ft.)	Volume (cu. ft.)	Heat Load (BTU/hr)	Heat Pump Capacity (BTU/hr)	Notes
1	101	Living Room	1,200	12,000	10,000	10,000	
2	102	Dining Room	1,000	10,000	8,000	8,000	
3	103	Kitchen	800	8,000	6,000	6,000	
4	104	Bathroom	500	5,000	4,000	4,000	
5	105	Bedroom	1,000	10,000	8,000	8,000	
6	106	Bedroom	1,000	10,000	8,000	8,000	
7	107	Bedroom	1,000	10,000	8,000	8,000	
8	108	Bedroom	1,000	10,000	8,000	8,000	
9	109	Bedroom	1,000	10,000	8,000	8,000	
10	110	Bedroom	1,000	10,000	8,000	8,000	

**Air Distribution Device Schedule**

Room	Room No.	Room Name	Area (sq. ft.)	Volume (cu. ft.)	Heat Load (BTU/hr)	Heat Pump Capacity (BTU/hr)	Notes
1	101	Living Room	1,200	12,000	10,000	10,000	
2	102	Dining Room	1,000	10,000	8,000	8,000	
3	103	Kitchen	800	8,000	6,000	6,000	
4	104	Bathroom	500	5,000	4,000	4,000	
5	105	Bedroom	1,000	10,000	8,000	8,000	
6	106	Bedroom	1,000	10,000	8,000	8,000	
7	107	Bedroom	1,000	10,000	8,000	8,000	
8	108	Bedroom	1,000	10,000	8,000	8,000	
9	109	Bedroom	1,000	10,000	8,000	8,000	
10	110	Bedroom	1,000	10,000	8,000	8,000	

**Exhaust Fan Schedule**

Room	Room No.	Room Name	Area (sq. ft.)	Volume (cu. ft.)	Heat Load (BTU/hr)	Heat Pump Capacity (BTU/hr)	Notes
1	101	Living Room	1,200	12,000	10,000	10,000	
2	102	Dining Room	1,000	10,000	8,000	8,000	
3	103	Kitchen	800	8,000	6,000	6,000	
4	104	Bathroom	500	5,000	4,000	4,000	
5	105	Bedroom	1,000	10,000	8,000	8,000	
6	106	Bedroom	1,000	10,000	8,000	8,000	
7	107	Bedroom	1,000	10,000	8,000	8,000	
8	108	Bedroom	1,000	10,000	8,000	8,000	
9	109	Bedroom	1,000	10,000	8,000	8,000	
10	110	Bedroom	1,000	10,000	8,000	8,000	



SCALE: 1/8" = 1'-0"

M101

HVAC PLAN

GATHERING  
@ Morris Square  
Church Building  
REHABILITATION  
CHARLESTON, SOUTH CAROLINA

Charleston Engineering  
215 S. 1st Street, Suite 200  
Charleston, SC 29401  
(803) 799-1111

SGA ARCHITECTURE  
1111 Market Street, Suite 200  
Charleston, SC 29401  
(803) 799-1111

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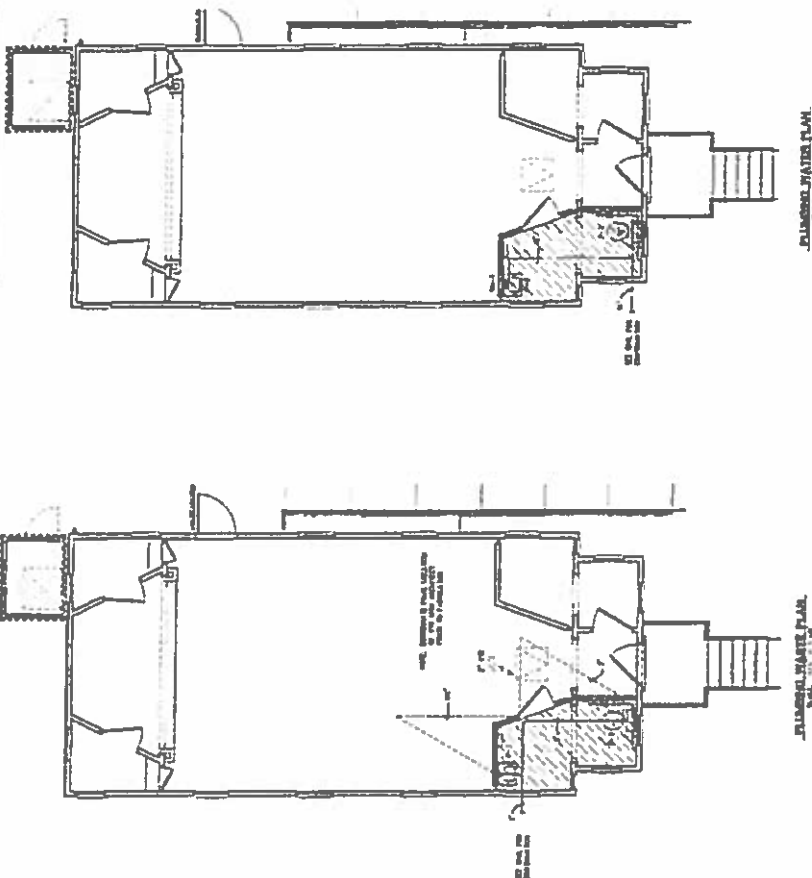


1. The first step is to identify the problem. In this case, the problem is that the company is not meeting its sales targets.

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P-4	mid sep 1987	10	10	10	1
P-3	mid sep 1987	10	10	10	2
P-2	mid sep 1987	10	10	10	3
P-1	mid sep 1987	10	10	10	4

Notes: 1. All open interest is in the nearest 1000 contract month. 2. All open interest is in the nearest 1000 contract month. 3. All open interest is in the nearest 1000 contract month. 4. All open interest is in the nearest 1000 contract month.

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**LEGAL NOTICE**

The following information is being provided for your information only. It is not intended to be used for any other purpose.

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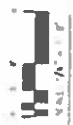
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GATHERING  
@ Morris Square  
Church Building  
REHABILITATION  
CHARLESTON, SOUTH CAROLINA

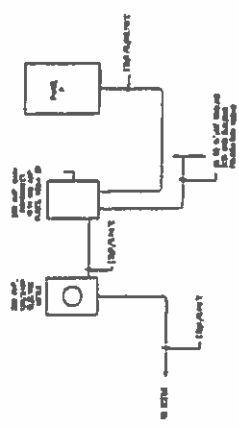
Carlson Engineering  
1000 E. 10th Street  
Charleston, SC 29403  
Phone: 799-1234  
Fax: 799-5678



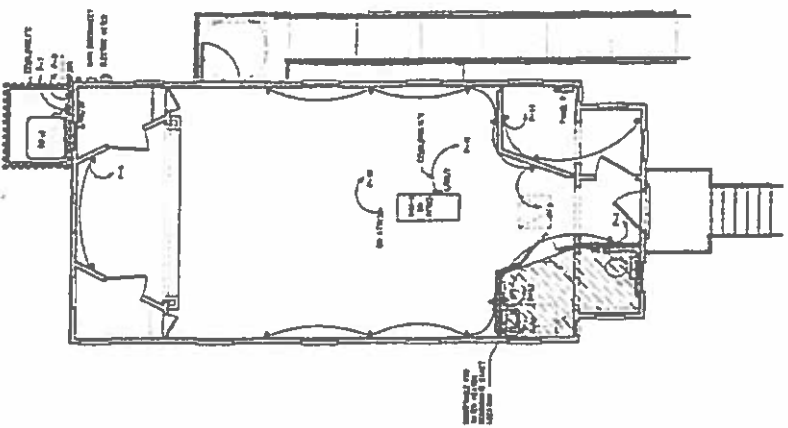
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Phone: 799-1234  
Fax: 799-5678



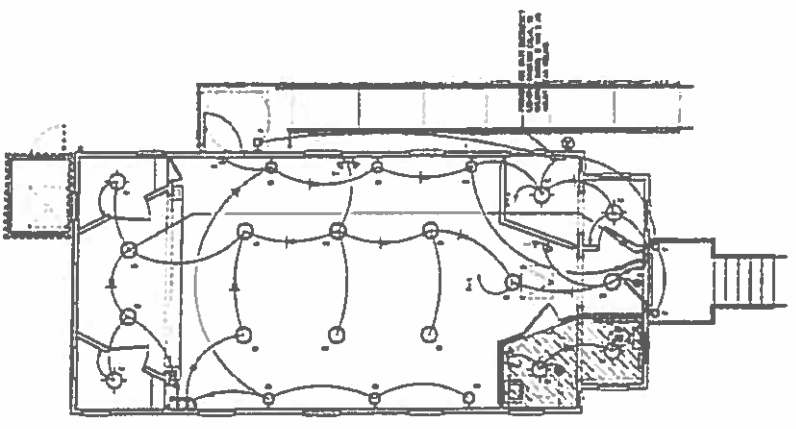
ELECTRICAL POWER DIAGRAM



ELECTRICAL SYMBOLS



ELECTRICAL SYMBOLS



- ELECTRICAL NOTES**
1. ALL NEW ELECTRICAL WORK SHALL BE IN ACCORDANCE WITH THE 2017 NATIONAL ELECTRICAL CODE (NEC) AND THE 2017 SOUTH CAROLINA ELECTRICAL CODE.
  2. ALL EXISTING ELECTRICAL WORK SHALL BE INSPECTED AND APPROVED BY THE ELECTRICAL INSPECTOR PRIOR TO ANY NEW WORK.
  3. ALL ELECTRICAL WORK SHALL BE DONE IN ACCORDANCE WITH THE MANUFACTURER'S INSTRUCTIONS.
  4. ALL ELECTRICAL WORK SHALL BE DONE IN ACCORDANCE WITH THE PROJECT SPECIFICATIONS.
  5. ALL ELECTRICAL WORK SHALL BE DONE IN ACCORDANCE WITH THE PROJECT SCHEDULE.
  6. ALL ELECTRICAL WORK SHALL BE DONE IN ACCORDANCE WITH THE PROJECT BUDGET.
  7. ALL ELECTRICAL WORK SHALL BE DONE IN ACCORDANCE WITH THE PROJECT QUALITY.
  8. ALL ELECTRICAL WORK SHALL BE DONE IN ACCORDANCE WITH THE PROJECT SAFETY.
  9. ALL ELECTRICAL WORK SHALL BE DONE IN ACCORDANCE WITH THE PROJECT ENVIRONMENT.
  10. ALL ELECTRICAL WORK SHALL BE DONE IN ACCORDANCE WITH THE PROJECT COMMUNITY.
- LEGEND**
- 1. LIGHTING
  - 2. RECEPTACLES
  - 3. EQUIPMENT
  - 4. SWITCHES
  - 5. OUTLETS
  - 6. PANELS
  - 7. METER
  - 8. SERVICE ENTRANCE
  - 9. STAIRS
  - 10. REST AREA



**APPENDIX C  
POST REVIEW UNANTICIPATED DISCOVERY PLAN**

1. The CITY shall ensure an unanticipated discovery plan is in place for development and construction of the replacement park, the rehabilitation of the Praise House, and other work associated with the DeReef Partial Conversion Project. In the event that unanticipated effects occur on historic properties, or new historic properties are discovered during the implementation of project activities, work in the location of discovery and in the immediate vicinity must stop immediately; the area must be secured; and the following parties must be notified:
  - a. SCPRT
  - b. NPS
  - c. SHPO, and
  - d. Cultural resources staff and cultural committees from the Catawba Nation, in the event that a discovery appears to be related to tribal interests or of pre-contact origin.

The CITY shall ensure that any unanticipated archaeological discovery is evaluated by a professional archaeologist (per RCW 27.53.030[11]). If the unanticipated discovery is determined by NPS, in consultation with SHPO, to be eligible for the National Register of Historic Places, NPS shall consult per provisions of 36 C.F.R. § 800.13.

2. If human remains are discovered during the project activities at the REPLACEMENT SITE, work in the location of the discovery and immediate vicinity must stop instantly, the area must be secured, and notifications provided according to S.C. Code Ann. § 27-43-10, *et seq* (Cum. Supp. 2014).

If human remains are determined to be non-forensic, the CITY shall notify SCPRT and NPS. NPS and SCPRT will consult with the signatories to the Agreement per provisions of 36 C.F.R. § 800.13 to determine the appropriate treatment required under the terms of this Agreement, or other actions required per state law.



**APPENDIX B**  
**RESPONSE TO COMMENTS ON THE ENVIRONMENTAL ASSESSMENT**

**A. INTRODUCTION**

This document summarizes and responds to comments on the DeReef Park Land and Water Conservation Fund Act (LWCFA) Section 6(f)(3) Conversion Environmental Assessment (EA) released for a thirty day comment period from July 16, 2015 to August 14, 2015.

The nature of some of the comments requires an explanation of the context under which the EA was done. Section B sets out that context.

Section C provides a summary of the comments received in alphabetical order. The summaries convey the substance of the comments made, but are not quoted verbatim. As the National Park Service (NPS) National Environmental Policy Act (NEPA) guidance suggests, the standard practice is to respond to substantive comments that are submitted during the public review period for EAs. As such, more detailed responses are provided for substantive comments received.

**B. CONTEXT**

The proposal to use a portion of DeReef Park for non-recreational purposes stems from a decision made by Charleston City Council, in 2003, to allow for a residential infill project to be constructed on the north and south sides of Morris Street in the vicinity of DeReef Park. City Council determined the infill project was appropriate and in the interests of the public, and rezoned the lands comprising the infill project (including DeReef Park) to a planned unit development (PUD). This action was undertaken by the Council after receipt of input of its planning staff, and after public hearings before both the Planning Commission and City Council. Council noted the project had been vetted with community, neighborhood and church groups and posed an opportunity to redevelop an area that was in need of revitalization. Further note was made that the project respected the public realm, reknitted a neighborhood, added density of population to the neighborhood as it once was and incorporated good urban design principles. See EA Appendix, Item 7. As part of the PUD authorizing the infill project, the City Council required that the developer provide the City with the same amount of land it was requesting from DeReef Park. The purpose of this requirement was to assure no “net loss” of park space in the public realm.

Because DeReef Park was protected under LWCFA Section 6(f)(3) as a result of earlier grants, a use of any portion of the Park for permanent non-outdoor recreation purposes is subject to LWCFA regulations at 36 C.F.R. 59.3, the conversion process. The conversion process involves both the NEPA process to assess the decision to use LWCFA protected

lands for non-recreational use (i.e. the infill project) and a requirement that any such lands permanently put to uses other than outdoor recreation on account of that decision be replaced by lands of similar utility and value. The NPS oversees the conversion process.

The City commenced the conversion process for DeReef Park, through State and Federal channels, starting in November 2007. The ultimate result was NPS approving the conversion and a replacement park. NPS executed a Simultaneous Release and Execution of Restrictive Covenants (Release) moving LWCFA Section 6(f)(3) protection from DeReef Park and placing LWCFA Section 6(f)(3) protection on a portion of Concord Park. The Release was recorded in the Office of the Register Mense Conveyance (RMC Office) for Charleston County. As a result of litigation commenced five years after the execution and recording of the Release, the National Park Service voluntarily agreed to reconsider its prior action, resulting in the EA now under consideration.

On the instruction from NPS, the EA was drafted in the context of conditions that existed as of January 2008, the time of the first conveyance of DeReef Park property to the developer. It does not address events occurring after that date. This point is made to provide the basis for some of the responses to comments, particularly those that rely on circumstances or events that have occurred subsequent to January 2008.

The approval of the conversion by NPS in 2008 spawned the implementation of the second phase of the infill project, the portion north of Morris Street. Land transactions contemplated by the infill project PUD were commenced, as was the platting of lots and the installation of infrastructure and construction of buildings on portions of DeReef Park. These activities were undertaken by the City and the developer under the auspices of the approved conversion granted by NPS in November 2008. These activities commenced prior to, and without notice of, the decision of the NPS to review its 2008 approval of the conversion. Note is made of these circumstances to provide the reader of the EA with a fact-based context that has a direct bearing on the scope of this EA. The NEPA implementing regulations at 40 CFR Part 1502.14 require an evaluation of practical alternatives. The regulations do not mandate or contemplate assessment of alternatives that are remote, speculative or unreasonable. Per the Council on Environmental Quality (CEQ), reasonable alternatives are those that are practical or feasible from a technical and economic standpoint, and using common sense. See guidance document *Forty Questions and Answers on the CEQ's Regulations*. The unusual, undisputed facts occurring prior to the drafting of this EA, including a prior approval by the NPS, the consummation of land transactions and the physical alteration of the Park in reliance on that approval and the lapse of five years between the approval and the litigation, have resulted in practical alternatives being narrowed to two, those

being either: (1) approving the State's proposed partial conversion of DeReef Park to non-public, non-recreational outdoor use and allowing the sub-grantee of the LWCFA funds (the City) to proffer a replacement site or sites in accordance with the regulations within one year; or (2) taking no action, whereupon the status quo will be maintained, with no further action pertaining to replacement parks being undertaken.

### C. SUMMARY OF COMMENTS AND RESPONSES

1. David Bouffard: The loss of DeReef Park is not justified. A replacement park of equivalent usefulness and location has not been provided. There exists a need for more parks in the neighborhood and there exists the opportunity to reclaim property at the former DeReef Park site by the City purchasing a portion of the former DeReef Park site from the developer. The EA needs to be redone with complete information.

Response: The EA contemplates a replacement park or parks for what is lost at DeReef Park to be made within one year of the approval of the conversion per the LWCFA conversion regulations at 36 CFR 59.3 (c). The unusual posture of this matter, with the approved conversion being reconsidered some five years after the Federal protections were removed, was unexpected and reasonably requires the City to be given adequate time to identify replacement parks. Any replacement park will be vetted by way of its own Environmental Assessment. That the infill project has not been completed and potentially eligible for acquisition is duly noted.

2. Bill Bowick: Cannonborough/ Elliotborough needs green space and DeReef Park. The Park is an important link to the African American community that once thrived there. Governmental entities have been dismissive of the respect that should be afforded the land.

Response: The comment that Cannonborough / Elliotborough needs green space is duly noted. The link of the Morris Street area to the African American community is also duly noted.

3. Jo Cannon: Has lived in the neighborhood for almost 35 years. DeReef Park is important to the community. The infill development should have never been approved. The corner floods. The property across the street was often used by African American men as a place to gather and chat. She has been against the development from the very beginning.

Response: Comments duly noted. DeReef Park is in an AE flood zone. As part of the infill project, the developer is required to comply with City drainage regulations, to include improvements that will assure that post-development run-off does not exceed pre-

development run-off. A portion of the property across Morris Street from the Park, the site of Simonton School, was acquired by the City as part of the infill project and is a public park.

4. Laura Chartier: Keep the federal protection because Cannonborough /Elliotborough needs a park. The old church was a great teaching tool about slavery and South Carolina. The development is ugly, makes flooding worse, has taken away the trees and should be torn down.

Response: Comments duly noted. The old church or Praise House is being renovated and preserved for public use. Consultation under Section 106 of the National Historic Preservation Act will address opportunities for documenting the Praise House.

5. Craig and Katie Comer: Supports the conversion. The neighborhood needs a newer, safer park.

Response: Comments duly noted.

6. Laura Croft (on behalf of six present and past neighborhood association presidents): The infill project is a misguided attempt at urban revitalization and should be reversed. The EA erroneously says the Park is located in the Radcliffeborough neighborhood. The Park is located in the Elliotborough/Cannonborough neighborhood. The EA does not evaluate all practical alternatives, particularly an alternative calling for reestablishing the Park at its existing location. The unsavory description of the Park in the EA was true decades ago, but not in 2008. By then, the area was undergoing rapid revitalization and there were many new residents. The Park was regularly used. The City was responsible for its condition. It is inaccurate for the EA to rely on 2000 census data. 2010 data should have been used. There was new development going on in 2003. The EA references minutes. Those minutes do not mention the LWCFA restrictions. The EA does not reflect that all practical alternatives were considered. No replacement park is identified in the-EA and a delay in providing a replacement park is allowed only if it is impossible to identify one now. Delaying the development of a replacement park deprives the neighborhood of a park in the interim. The conversion greatly reduces the size of the Park. The conversion results in the relocation of the Praise House to an area of lower elevation in a flood zone. New, tall buildings around the Park will create an unwelcoming feeling, like across the street at Simonton Park. The negative impacts to the Park were sent to City Council in 2011, with no response. The EA does not comply with the South Carolina Comprehensive Outdoor Recreation Plan, which recognizes the need for parks in urbanized areas. Elliotborough/Cannonborough needs green spaces and City plans say so.

Response: DeReef Park is in Radcliffeborough, a neighborhood association founded in 1978, the charter of which extends its boundaries to the properties north of Morris Street. The EA takes into account areas within one half mile of the Park, consistent with its program as a neighborhood park which is designed to serve residents within a ½ mile radius. In this instance, that radius includes both the Radcliffeborough and Elliotborough/Cannonborough neighborhoods. The alternative for keeping the Park as originally configured is duly noted. The revitalization of the area in and around DeReef Park that existed in 2008 included the Phase I of the infill project that resulted from the decision City Council made in 2003. The most recent census data available prior to 2008 was the data from the 2000 census. The City was instructed not to use the 2010 data. Had it done so, such would have revealed the area even more gentrified from the conditions that existed in 2000, 1990 and 1980. The 2000 census data cited in the EA included census blocks or portions thereof within a half mile of the Park, the area served by the Park. The minutes of City Council and Planning Commission proceedings do not include reference to the LWCFA protections, but the minutes reflect public notice and participation in the decision to implement the infill project that included a reconfigured DeReef Park. A partial conversion with delayed replacement is necessitated due to the decision of the NPS to revisit its prior decision on the conversion. It is not unreasonable to accord the City time to appropriately evaluate where best to locate a replacement park. The comments regarding the disagreement with the propriety of the infill project, the condition of the Park and the City's responsibility therefore and that the partial conversion will result in a smaller DeReef Park footprint are duly noted. It is also duly noted that the Praise House will be in a lower area of the Park, but within the same flood zone as the original location. In conjunction with the relocation and renovation, the foundation of the Praise House will be slightly raised. This slight raise in elevation, along with drainage improvements required of the developer by the infill project, will provide better protection for the Praise House against flooding. The commenter's displeasure with the feel of Simonton Park and the fear of the same fate for DeReef Park are duly noted. Negative impacts of the conversion presented to the City in 2011 are not within the scope of the EA. That the South Carolina Outdoor Comprehensive Recreation Program and City plans acknowledge the need for parks in urban areas and in Elliotborough/Cannonborough, respectively, are duly noted.

7. Claire Curtis: Opposes the conversion. There is now no park, no trees, and no shade. The City let the Park fall into disrepair. There is no place for kids to learn to ride bikes, climb a tree or make friends. Attached was a picture of her child learning to ride a bike in the Park in 2005.

Response: Comments duly noted. Also, as to the trees, the infill project approval requires the planting of street trees, and all City of Charleston Grand Trees (24" or greater diameter at

breast height) within the reconfigured park have been saved pursuant to the City's Zoning Ordinances on tree protection.

8. Rachel N. Dowling: Keep DeReef Park where it is. Her parents served in St. Joseph Society and held meetings in the church.

Response: Comments duly noted. Also, as to the church, see Response to Comment 4.

9. Lauren Dunn: Save the Park.

Response: Comment duly noted.

10. Merissa Ellis: Played in DeReef Park as a child. The infill project is ugly and has displaced trees and greenery and the views from her yard. There is not enough open space within walking distance for children and others.

Response: Comments duly noted.

11. Friends of DeReef Park: The EA elides the proud history of the Park and belittles its description. The EA fails to note the Park's location next to the historic Cannon Street YMCA, its housing of the Praise Chapel and its housing of the first African American public school in the City (Simonton School). The EA does not detail how prior LWCFA grants were spent. The approval of the infill project resulted in a windfall to the City. The conversion actually occurred in November 2007, when title to the Park was transferred to the developer. The 2008 conversion was rushed, a sham and done without public input. The project sponsors and the NPS made many mistakes. The Friends of DeReef Park were forced to sue to vindicate its rights. The EA attempts to eliminate history, aesthetics and recreation. The Praise House will no longer be a marker of African American history, but a building that has bathrooms. The EA does not properly consider all reasonable and practical alternatives. The most obvious viable alternative to consider is returning the LWCFA covenants to DeReef Park. The City and NPS must consider an alternative where the City conveys less than 0.954 +/- acres to the developer. It assumes the conversion is the final result without evaluating whether the conversion should have occurred at all. The real estate transaction occurred in 2012. The EA should accurately characterize the infill project. The EA does not include the environmental screening form. The addition of 31 cars on Morris Street caused by the infill project will adversely affect air quality and cause noise and pose a safety hazard for children. The EA should have outlined the zoning process and considered the effect of the infill project on what is left of DeReef Park. The EA is incorrect in claiming that children will have a place to play tag or throw a Frisbee. The reconfigured park is too small for community events. The drawing of the Park in the EA is misleading and not to scale.

Environmental justice considerations were not evaluated. The EA does not say where a replacement park will be, which has important environmental justice implications. The EA does not mention that mature trees have been removed. The EA does not adequately address impact under the National Historic Preservation Act. The EA is not factual in its depiction of the Park. If the Park was undesirable, that is the City's fault. It had a responsibility under the LWCFA to properly maintain the Park. Had the existence of the LWCFA protection been revealed as part of the rezoning, such would have likely raised more questions. The leaders of the Shiloh Church supported the infill project because of affordable housing requirements, and they have not been met. There is no justification to delay identifying a replacement park. The area around DeReef Park has existing and future recreation needs. The environmental analysis was not conducted in a neutral and factual manner. Identifying replacement parks should not be delayed.

Response: The EA focuses on DeReef Park, as originally configured. Its environs and the historic significance thereof, and the appropriate documentation of the Praise House, are being addressed in the Section 106 consultation process under the National Historic Preservation Act. The Praise House was (and still is) located in the Park. Simonton School was not located in the Park. The School was located on property on the south side of Morris Street, a portion of which is now Simonton Park. How prior grant funds were expended is not within the scope of this EA, the issue here being the propriety of the partial conversion. The LWCFA grants received by the City to assist in acquiring and developing the Park have been closed out by the State. The agreement the City entered with the developer required the City to receive, as consideration for DeReef Park, lands within the infill project of equivalent value. The developer assigned a value to the property transferred to it from the City to conform to State document recording requirements that necessitate an affidavit of consideration and whether a transaction is exempt from State deed stamps. The City did not receive any cash from these transactions. The assertion that the City received a "windfall" is incorrect. The City received title to land contemplated by the infill project from the developer in November 2007, which deed of title contained an error, resulting in a corrective deed being executed in January 2008. The City did not convey any portion of DeReef Park until January 2008. The commenter's characterization of events leading to this EA, including actions of the NPS and sponsors is duly noted. This EA process is being undertaken to fulfill requirements of the LWCFA. This EA is addressing the request for approval of a partial conversion. This conversion was approved in 2008, which has relevance to the reasonableness and practicality of alternatives. Please refer to Part B, Context. The replacement park will be subject to a subsequent EA. The infill project is described in this EA. The environmental screening form is part of a conversion package, to be submitted with the EA to the State for NPS consideration. Comments regarding the potential for increased traffic, the safety of children and the quality of air posed by the infill project are duly noted. This EA focuses on the issue of whether a portion of the Park should be converted and



whether the loss of that recreational opportunity will adversely affect traffic or air quality. The zoning process is outlined in the EA. The determination to approve the zoning for the infill project was made with knowledge that it would result in smaller parks within the neighborhood, as opposed to one. A reconfigured DeReef Park includes an open lawn for tag and Frisbee tossing, as does Simonton Park across the street. The Park has always been a neighborhood park. By its nature, it is designed to accommodate smaller gatherings, not community events. Such smaller gatherings can be accommodated at either DeReef or Simonton Park. The drawing of the reconfigured DeReef Park in the EA was characterized as conceptual, an accurate representation. Environmental Justice considerations were addressed by the EA, to include the constituency of the neighborhood when the Park was constructed and how it has evolved. The EA for any replacement park will address environmental justice considerations. As to the trees, refer to Response to Comment 7. The comment that had the existence of the LWCFA covenants been mentioned during the rezoning process such would have "likely raised more questions" is duly noted. The affordable housing commitment arising from the infill project is not within the scope of this EA. The reason for a delayed replacement park has been addressed, refer to Response to Comment 1. That the area around DeReef Park needs recreation space now and in the future is duly noted.

12. Todd Fox: The Park is needed in the neighborhood. What the City did was illegal. The area is gentrifying and needs a park, not an eyesore development in a flood area.

Response: Comments duly noted. Also, as to the infill project, refer to Part B, Context regarding the vetting of the planned unit development with the community, neighborhood and church groups and that the infill project posed an opportunity to redevelop an area that was in need of revitalization.

13. Ryan Glushkoff: The neighborhood needs a park now, more than in 2005 when he moved there, when there were no young kids in the area. The decision to sell the property to a developer was made in a different era, when no one wanted to live in the area, and there were few young kids. Times have changed. Kids love parks and DeReef Park needs to be maintained.

Response: Comments duly noted. Also, as to the park needs now, refer to Response to Comment 3.

14. Andrew Gould: Supports the conversion. He attended neighborhood presentations by the City and developer of the infill project. The project was appealing, and the neighborhood association endorsed the idea of rebuilding a smaller DeReef Park and swapping some land

with a new park across the street. He would like to see nice new homes and a rebuilt playground.

Response: Comments duly noted.

15. Wyndi Gundrum-Cooper: A neighborhood park is needed. The conversion is not justified and no replacement park has been identified.

Response: Comments duly noted. Also, as to the conversion process, refer to Part B, Context.

16. Linda D. Hancock: The conversion should not be approved until a clear plan is in place and shared with the community.

Response: Comments duly noted. Also, as to the conversion approval and replacement park, refer to Part B Context.

17. Richard Hendry: Plans should be put in place for a park within the neighborhood and the City should redo the EA to more accurately reflect its looks, character and importance to the Elliotborough/Cannonborough neighborhood and the City.

Response: Comments duly noted. Also, as to the EA, refer to Part B, Context.

18. Kimberly Hines: The destruction of DeReef Park is terrible. There is no place for kids to play and wildlife to live. Hawks lived in the park. The neighborhood needs a park.

Response: Comments duly noted.

19. Brett W. Johnson: The Park was within walking distance of Cannonborough/Elliotborough neighborhood. It had parking for those who wished or needed to drive. The area is in need of outdoor recreational space. The City attempts to diminish the attractiveness of the Park over a number of years prior to 2008, but that was due to lack of maintenance and amenities provided to similar parks on the peninsula. The EA does not adequately address parking, development will exacerbate flooding in the area, the Praise House has been neglected for many years, the neighborhood impact created by loss of park space was not adequately considered, and ignores the impact of the loss of the Park and moving the Praise House on African-American heritage. He objects to transferring park space outside of Cannonborough/Elliotborough neighborhood.

Response: Comments duly noted. DeReef Park was designed as a neighborhood park, a park designed to be used primarily by those within walking distance. On-site parking is no longer available, and will result in the loss of one accessible space. There are opportunities for off-street parking for those who would prefer to drive to the Park. Also, as to the church, refer to Response to Comment 4.

20. Helene Kenny: Save African American roots and provide more green space. The City report is inaccurate. Stop the infill project, renovate the church and return open space for all to enjoy.

Response: Comments duly noted. Also, as to the church, see Response to Comment 4.

21. Elise Ladew: Misses the trees, the shade and the migratory birds that used the Park and her yard (next door). The infill project has little green space and she is now experiencing heavy run-off. The area needs green spaces, the children need a place to play and there is no guarantee that the church will be restored.

Response: Comments duly noted. Also, as to the church and trees, refer to Response to Comments 4 and 7.

22. Katy Ladew: It is sad to lose the trees and chapel of the Park, as originally configured. The neighborhood needs a park. Not all facts were present when the property was sold and neighborhood opposition was ignored.

Response: Comments duly noted. The decision to sell the Park was made within a public process, to include two public hearings.

23. Lois Lane: Support the Park. She owns rental property in Cannonborough/Elliottborough, and the City does not have the best interest of the neighborhood in mind, and would not have let this happen elsewhere.

Response: Comments duly noted.

24. Li Doulan: The City violated the law by selling the Park prior to getting permission from the NPS. The EA is skewed and fails to provide a replacement park. A better balance between residential and commercial development is needed, as is respect for diversity and heritage.

Response: Comments duly noted. Also, refer to Part B, Context.

25. Mary Miller: The EA did not include the environmental screening form. The area of upper King Street is undergoing radical change. The visitors and residents have no green space to enjoy and the children do not have access to outdoor play space. Simonton Park is not a legitimate park and not properly signed to document its history. She has not seen plans to renovate the Praise House, to include restrooms. Moving the Praise House to an area that floods is a slap in the face to the African American community. City allowed trees to be illegally cut. Plymouth Congregational Church, on Spring Street, would be a suitable replacement park.

Response: Comments duly note. The environmental screening form is part of a conversion package that, along with the EA, will be submitted to the State, which in turn will submit it to the NPS. Simonton Park is signed as a public park. Plans for the restoration of the Praise House are a matter of public record, having been approved by the City's Board of Architectural Review and are on file with the Department of Planning, Preservation & Sustainability. Trees on the remaining portion of DeReef Park are being preserved. The infill project PUD requires the planting of street trees, including those abutting the Park.

26. C.A. Moloney: The conveyance of DeReef Park cannot be justified without a replacement park being identified. Minutes of Council proceedings do not reflect that the Park had federal protection. DeReef Park is in Elliotborough, and he does not recall CENA being approached by the developer prior to the infill project going forward. The park was unkempt, but that was the doing of the City. Simonton is still not maintained well. In October 2012, he submitted a conceptual drawing to the Planning Department for a property on King and Spring Streets. The conversion should be approved only if a 1.3 acre contiguous parcel in Elliotborough/Cannonborough is acquired as a replacement park within a short period of time. Property value should not be a deciding factor given the extreme limitation of potential sites.

Response: Comments duly noted. DeReef Park is in Radcliffeborough, a neighborhood association founded in 1978, the charter of which extends its boundaries to the properties north of Morris Street. DeReef Park serves Radcliffeborough and Elliotborough/Cannonborough. See also as to the replacement park, Response to Comment 1.

27. Randi Popp: The Park should be saved. The infill project has made flooding worse. The area was improving when Park was torn down. The City needs more green space. The trees and shade benefitted the whole community.

Response: Comments duly noted. As to the flooding, see Response to Comment 3.

28. George Reavis: Supports the conversion. He lived at 46 Morris Street. The area was run down and illicit activities were occurring in the Park and the vicinity. The infill project was better for the entire area, as evidenced by the number of people moving in that would not have happened except for the first phase of the project. The proposed development has a park.

Response: Comments duly noted.

29. Pamela Sawers: DeReef Park is sacred green space. It should be preserved and protected. The school house is a testament to heritage.

Response: Comments duly noted. Also, as to the church as a testament to heritage, see Response to Comment 4.

30. Cator Sparks: The City's story is misleading and incomplete. The neighborhood has no other parks. Church groups and families used the Park. The EA wrongfully presumes DeReef Park, as originally configured, cannot be preserved. The EA fails to discuss a replacement park. The EA ignores the impact of the loss of DeReef and moving the Praise House has on African American heritage.

Response: Comments duly noted. Also, as to the EA, refer to Part B, Context.

31. John Sylvest: No comments on the EA; he already offered comments under Section 106 of the National Historic Preservation Act regarding the DeReef Park undertaking.

Response: Comments duly noted.

32. Joshua Walker: Commented that if an email from the neighborhood association is close to true, City should discuss the matter more openly and organize a discussion for the best course of action.

Response: Comment duly noted.

33. Brittany Wortman: Save the Park.

Response: Comment duly noted.

34. Mary Wyatt: The Park should be saved, and its African American heritage honored. As a resident next to the infill project, the City does not need more houses; it needs more open,

accessible green space. There is only a limited amount of unencumbered park space in the neighborhood.

Response: Comments duly noted. Also, as to the African American heritage, see Response to Comment 4.

APPENDIX C  
U.S. FISH AND WILDLIFE SERVICE (USFWS) COORDINATION



## United States Department of the Interior

### FISH AND WILDLIFE SERVICE

176 Croghan Spur Road, Suite 200  
Charleston, South Carolina 29407



May 19, 2015

Ms. Gwenevere P. Smith  
Chief, Recreation Programs Branch  
National Park Service  
Southeast Regional Office  
Atlanta Federal Center, 1924 Building  
100 Alabama Street, SW.  
Atlanta, Georgia 30303

Re: Department of the Interior – National Park Service-City of Charleston-DeReef Park,  
Charleston, Charleston County, South Carolina  
FWS Log No. 2015-I-0358

Dear Ms. Smith:

The U.S. Fish and Wildlife Service (Service) has received your May 11, 2015, letter fulfilling the National Park Service's requirement under the National Environmental Policy Act (NEPA) for a Federal undertaking and to request our response on the protected species assessment for DeReef Park located on Morris Street in Charleston, Charleston County, South Carolina. DeReef Park is a city park partially being developed for single and multi-family residential homes. The site is located in a heavily developed urban area that has experienced residential and commercial development since the early 1800's. The site has been altered by current and past human activities.

The City of Charleston received two Land and Water Conservation Fund grants in 1981 and 1991 to assist with the acquisition and development of land for a park on Morris Street known as DeReef Park. A portion of the park was sold to a developer in January 2008. In December 2014, the United States District Court granted the motion for voluntary remand to reconsider the November 2008 approval of the after-the fact conversion of DeReef Park. The National Park Service was given a deadline of April 30, 2015, (but has been allowed until July 30, 2015) to reopen the administrative record and ensure the requirements of the NEPA and National Historic Preservation Act will be adequately met.




As noted in our conference call on February 24, 2015, on this matter, it is the Service's policy that we do not generally enter into section 7 consultation pursuant to the Endangered Species Act (ESA) when applicants are seeking "after-the-fact" authorization for projects that have already been completed or when impacts may have already occurred. Such a practice does not promote the conservation of listed species and critical habitat, an obligation for both the action agency and the Service under the ESA.

Further, the Service's policy is fully supported by the ESA and its implementing regulations. Both the ESA and the regulations are based on an underlying assumption that consultation will occur prior to any action being taken. Section 7(a)(2) of the ESA states that each Federal agency shall, in consultation with the Secretary, *insure* that any action authorized, funded, or carried out by such agency is *not likely to jeopardize* the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat (*See* 16 United States Code 1536(a)(2) (emphasis added)). Title 50 Code of Federal Regulations (CFR) 402.02 defines "jeopardize the continued existence of" as "to engage in an action that reasonably *would be expected*, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of the species in the wild by reducing the reproduction, numbers, or distribution of that species" (*See* 50 CFR 402.02 (emphasis added)). In the Service's opinion, the word "*insure*" and the phrases "*not likely to jeopardize*" and "*would be expected*" clearly contemplate consultation on a proposed action and not an action that has already been completed. The protections of the ESA insure against jeopardy. If the ESA and its implementing regulations contemplated after-the-fact consultation, there would be no need for the Service to consider and recommend reasonable and prudent alternatives in order to avoid the *likelihood* of jeopardy or reasonable and prudent measures to minimize the amount or extent of *anticipated* incidental take.

When a project has been completed, as is the case with DeReef Park, it becomes part of the environmental baseline. The environmental baseline includes the past and present impacts of all Federal, State, or private actions and other human activities in an action area, the anticipated impacts of all proposed Federal projects in an action area that have already undergone formal or early section 7 consultation, and the impact of State or private actions that are contemporaneous with the consultation in process (*See* 50 CFR 402.02). The consultant for this project, S&ME, Inc., conducted the protected species assessment on March 20, 2015. They stated, "Based on a review of historic aerial photographs, photographs of DeReef Park, and the location of DeReef Park in a heavily developed urban area that has experienced constant residential and commercial development since the early 1800s, it is our opinion that the site likely did not formerly contain any significant and unique habitats that provided habitat suitable for the federally listed threatened or endangered species discussed above in the recent past." Inasmuch as S&ME, Inc. has not identified any new effects associated with DeReef Park, the existing environmental baseline remains unchanged, and there are no new effects warranting ESA consultation. In addition, the protected species assessment provided to the Service by the applicant concluded that there are no impacts to the protected Federal species listed for Charleston County at DeReef Park. Upon review of the submitted project information and in comparison to our species and habitat database based on its current state, there are no known occurrences of any threatened or endangered species within the project area.

To politely reiterate, it is the Service's policy that we do not enter into section 7 consultation for completed actions. We hope the above information is helpful. If you need further assistance, please contact Mr. Tom McCoy at (843) 727-4707 ext. 227, and reference FWS Log No. 2015-I-0358.

Sincerely,

  
for Thomas D. McCoy  
Field Supervisor

/TDM

APPENDIX D  
SHPO CONCURRENCE LETTER



## United States Department of the Interior



NATIONAL PARK SERVICE  
Southeast Regional Office  
Atlanta Federal Center  
1924 Building  
100 Alabama St., SW.  
Atlanta, Georgia 30303

### OFFICIAL CORRESPONDENCE VIA ELECTRONIC MAIL

### NO HARD COPY TO FOLLOW

IN REPLY REFER TO:  
8B(SER-RPB)  
45-000856, -985

November 9, 2015

W. Eric Emerson, SHPO  
SC Department of Archives & History  
8301 Parklane Road  
Columbia, SC 29223

Dear Dr. Emerson:

The National Park Service (NPS) is requesting your concurrence on our Section 106 process to date as we work with consulting parties to develop a Programmatic Agreement (PA) to resolve adverse effects (36 CFR 800.14(b)) relating to a partial conversion of a Land and Water Conservation (LWCF) site at DeReef Park in Charleston, South Carolina.

A consultation meeting held October 26, 2015 in Charleston, South Carolina ended with disagreement about the Section 106 findings to date. There was consensus on several proposed mitigations and agreement among signatory parties that an agreement document could complete this Section 106 consultation. The Advisory Council on Historic Preservation (ACHP), a consulting party, recommended developing a PA to resolve the adverse effects from relocating the praise house and provide clear procedures for the replacement site(s) selected to complete the partial conversion.

The NPS initiated Section 106 consultation with your office on March 6, 2015. The proposed Federal undertaking is to revise the agreement between NPS and the South Carolina Department of Parks, Recreation and Tourism as to which areas of land the City of Charleston will administer for public outdoor recreation under LWCF project numbers 45-00856 and 45-00985. The NPS has considered the scale and nature of the conversion when considering the boundaries of the Area of Potential Effect (APE) and defined it as the fullest extent of what could be covered within our administrative authority. In this case, that equates to the original boundary of DeReef Park at the time the second grant was closed.

Within DeReef Park is the "Sons and Daughters of Joseph No. 9 Mission" also known as "9 DeReef Court Chapel", a potentially contributing resource to the proposed expansion of the historic district. On July 26, 2015, the NPS determined the previous relocation of this praise house was an adverse effect (36 CFR 800.5(a)(2)(iii)).

Again, we seek your concurrence on the process and findings to date and look forward to developing a PA to resolve adverse effects and address community concerns at DeReef Park. If you concur with the NPS Section 106 findings to date, please sign the box below and return a copy of your concurrence by **COB Thursday, November 12, 2015**. If, for any reason, you do not concur, please provide a written statement to the NPS explaining your rationale. We apologize for the short turnaround, however, as you are aware the NPS is under a court order to complete the voluntary remand process for this partial conversion as soon as possible. We appreciate consulting with you and please contact us with any concerns or comments.

South Carolina State Historic Preservation Office

11/9/15  
Date

Please send your response to:

Gwen Smith, Recreation Programs Chief  
National Park Service, Southeast Regional Office  
1924 Building  
100 Alabama Street, SW  
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Sincerely,



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### APPENDIX # 3

NATIONAL ENVIRONMENTAL POLICY ACT  
ENVIRONMENTAL ASSESSMENT  
OF  
DEREEF PARK, CHARLESTON, SOUTH CAROLINA  
JULY 2015

A proposal for the partial conversion of park land protected under Section 6(f)(3) of the Land and Water Conservation Fund Act of 1965, as amended; Public Law 88-578; 43 U.S.C. §§ 4601-4 et seq.

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## **CHAPTER 1 – PURPOSE, NEED, AND BACKGROUND**

### **Purpose for Action**

The City of Charleston, South Carolina (the "City") is requesting the State of South Carolina (the "State") to submit a conversion request to the National Park Service (the "NPS") for the retroactive removal of the federal Land and Water Conservation Fund Act (LWCFA) Section 6(f)(3) public outdoor recreation purpose restriction from a portion of DeReef Park (the "Park"), formerly known as Radcliffeborough Park, located on Morris Street in downtown Charleston, South Carolina, and mitigate the loss of federally restricted public outdoor recreation property by securing replacement property within one year of federal conversion approval pursuant to the LWCFA conversion regulations at 36 C.F.R. 59.3.

In this case, the State sub-granted two LWCFA grants to the City to benefit DeReef Park, thereby establishing a federal LWCFA Section 6(f)(3) restriction to public outdoor recreation purposes. In return, the City and State agreed to maintain DeReef Park for public outdoor recreation purposes consistent with the Section 6(f)(3) restriction, unless otherwise approved by the National Park Service.

On January 17, 2008, the City conveyed DeReef Park Section 6(f)(3) park property to a private party for a project involving a planned unit infill development (the "Infill Project") which will permanently occupy a portion of Section 6(f)(3) restricted DeReef Park. This conveyance occurred before the State submitted a conversion request to NPS. Now the State is seeking retroactive approval by the NPS to remove the Section 6(f)(3) restriction from 0.954+/- acres of DeReef Park because this section of DeReef Park will be permanently used for private purposes that do not meet the definition of public outdoor recreation.

This Environmental Assessment (the "EA") will assess the impacts of the partial conversion on any significant resources and issues associated with the original Section 6(f)(3) restricted DeReef Park to be converted and to the part of DeReef Park that will remain under Section 6(f)(3) restriction.

### **Need for Action**

The need for NPS approval is required by the federal LWCF Act of 1965, as amended, and the LWCFA State Assistance Program Post Completion Compliance Responsibilities regulations at 36 C.F.R. 59.3 (see Appendix, Item #1) for the conversion of LWCF Act Section 6(f)(3) restricted public outdoor recreation properties. Pursuant to these regulations, the State must submit a conversion request seeking NPS approval to remove the federal Section 6(f)(3) public outdoor recreation restriction from any property proposed for other purposes. The LWCF State Assistance Program Federal Financial Assistance Manual of October 1, 2008 (LWCFA Manual), Chapter 8.E, addresses LWCFA conversions and associated guidance including the need for States to seek retroactive review and approval by NPS of conversions that have already occurred.

Pursuant to the National Environmental Policy Act ("NEPA") of 1969, P.L. 91-190, 42 U.S.C. §§ 4321 et seq., this EA is required to help the NPS evaluate the environmental impacts on significant resources and issues of removing the federal public outdoor recreation use restriction (the proposed action), including whether the remaining Section 6(f)(3) restricted DeReef Park will constitute a viable outdoor recreation unit, and to establish the baseline mitigation requirements

for securing replacement park(s). This EA will also provide the interested and affected public an opportunity to review and comment on the proposed action.

## **Background**

DeReef Park is a 1.3+/- acre neighborhood park in Charleston, South Carolina. It is located on the Peninsula, on the north side of Morris Street, approximately 100 feet west of the intersection of Morris Street and Jasper Street in the Radcliffeborough section of the City (see Appendix, Item # 2.)

The City accepted two federal LWCFA grants through the State for acquisition and development of DeReef Park and agreed to grant conditions, including to maintain DeReef Park for public outdoor recreation purposes unless otherwise approved by the National Park Service through the LWCFA Section 6(f)(3) conversion process.

Now, the City proposes to request NPS retroactive approval to remove the federal LWCFA Section 6(f)(3) restriction from 0.954+/- acres of DeReef Park. On December 17, 2002, the City approved the Infill Project which will permanently occupy a portion of the Section 6(f)(3) restricted DeReef Park property. Pursuant to the LWCFA regulations at 36 C.F.R. 59.3, the Infill Project does not meet the definition of public outdoor recreation. The remaining LWCFA Section 6(f)(3) 0.346+/- acre portion of DeReef Park will be renovated as a smaller neighborhood park. The City proposes to mitigate this action by securing replacement site(s) within one year of federal approval of this proposal pursuant to the LWCFA conversion regulations at 36 C.F.R. 59.3.

## **DeReef Park History and Description**

DeReef Park is a 1.3+/- acre park located on Morris Street in downtown Charleston. The Park was acquired and improved with the assistance of LWCFA grants. The State sub-granted two federal LWCFA grants to the City to create and develop DeReef Park (a.k.a. Radcliffeborough Park) as follows:

1. LWCFA grant #45-00856 - To assist in the cost of acquisition of multiple parcels to assemble the new neighborhood park, year approved: 1981.
2. LWCFA grant #45-00985 - To assist in the cost of improvements to Radcliffeborough Park, including demolition of an existing road, a playground with equipment, walkways, picnic tables, landscaping, and curbing, year approved: 1991.

As a result of the two federal grants, LWCFA Section 6(f)(3) restriction to public outdoor recreation purposes was established for the entire DeReef Park, and the City agreed to maintain and use the Park for public outdoor recreation purposes unless otherwise approved by the Department of the Interior, National Park Service, through the conversion process per federal regulations at 36 C.F.R. 59.3 and described later in this section (see Appendix, Item # 1). The Park property covered by this restriction was verified as part of this environmental review process.

DeReef Park was constructed to fill a recreational need in the Radcliffeborough neighborhood of the City and to assist the revitalization efforts then occurring in this area of the City. At the time of acquisition, the area around the future DeReef Park was run down and in need of revitalization. A number of private and public initiatives were being implemented to incentivize the rehabilitation of

the area, to include making available Section 8 rental subsidies, the designation of the area as a Section 312 Rehabilitation Loan program where monies on favorable terms were made available for owner occupied units, and the initiative of the Historic Charleston Foundation, a non-profit organization, which acquired and renovated the exterior of structures, and then made them available at below market rates to long term residents of the area that met specified low-to-moderate income levels. The 1980 census data for this area of the City reveals the African American population exceeded 85%. (See Appendix, Item #4)

The demographics of the Park's service population changed over the course of the years. The 1980 census data revealed the area to be predominantly populated by African Americans (87%). Twenty-seven (27%) percent of the population was under the age of 18. Non-family households (a single householder residing with 2 unrelated persons) comprised 33.2% of the households in the area. The median household income was \$7,640, as compared to the overall City median of \$13,486. By 1990, the African American population had decreased, as had the population under the age of 18, to 76.3% and 16.8%, respectively. This decline in African American population from the 1980 census (11%) outpaced the decline in African American population city-wide (5.5%). Non-family households increased to 34.9% of the households in the area. Median household income of \$11,447 was less than the overall City median of \$24,029. These trends continued over the next decade. The 2000 census data reveals that the African American population had declined to about 55.3%, a drop of about 21% since 1990. The population of those under 18 years of age was around 15.8%, and non-family households grew in excess of 51% of the households. The college age population (18-24 years of age) increased from 21.6% in 1990 to 34.7% in 2000. Median household income of \$14,910 remained lower than the overall City median of \$35,395. The proximity of the area to the College of Charleston and the Medical University of South Carolina, each within an easy walk, could be factors contributing to these changes. (See Appendix, Item #4)

DeReef Park was designed to serve as a "Neighborhood Park" in the City's park matrix. A "Neighborhood Park" is one intended to primarily serve those living within a one-half mile radius of the park site (see Appendix, Item #5). Most users of DeReef Park accessed it by foot. The Park included play equipment for young children, a couple of picnic tables, two small chess tables, a couple of horseshoe pits, a small spray-play feature and some off-street space for parking. The Park had some brick and concrete paths that primarily served to organize the space. Mature trees within the Park provided shade, and a small building with historic significance was incorporated into the Park as well. Types of outdoor recreation activities and uses that took place at DeReef Park included sitting on benches, picnicking, informal Frisbee and ball play, passive games associated with the Park's amenities and an occasional gathering place for groups.

The small historic building in the LWCFA Section 6(f)(3) area was once owned by the Sons and Daughters of Joseph No. 9 Mission. The building was located at what was once 9 DeReef Court, and over the years has been referred to as "9 DeReef Court Chapel" and the "United Missionary Chapel." The Praise House, a regional vernacular term for a place of worship or meeting house, is a contributing resource to a historic district that has been determined to be eligible for listing in the National Register of Historic Places (the "National Register"). The building was in a state of disrepair when acquired by the City in 1988. The intent was to refurbish the Praise House and use it in conjunction with the Park. A lack of funding prevented its rehabilitation. Over time, the elements took their toll, requiring that the Praise House be boarded up for safety considerations.

Despite the public and private efforts to revitalize the area around DeReef Park, the area stagnated, as did the Park. There was a significant change in the racial make-up and population age of the area, but no appreciable change in household income from 1980 to 1990 (see

Appendix, Item #4). The layout of the Park itself and how it related to Morris Street and neighboring properties could have also contributed to its stagnation. From Morris Street, the east side of the Park was visible, but partially obscured by trees. The west side of the Park, where the Praise House was situated, was obscured by structures on private property on the west side of DeReef Court. The structures on the private properties that bordered the perimeter of the Park "backed up" on the Park, resulting in a situation of the Park not being under the observant eyes of its neighbors. This secluded condition made the Park a prime hang-out for older teenagers and others, and less attractive and user-friendly to the small child or leisure-seeking adult. Due to a lack of funding, the Praise House persisted in a state of disrepair, and despite efforts to keep it boarded up, it was not unusual for it to be broken into. The inside of the Praise House was in very poor shape due to its use by vagrants who left trash and broken-up items strewn about. This condition was likely exacerbated by the poor condition of the exterior of the building that provided inadequate protection. In the later years, the Park was mostly used for exercising dogs and free parking, with occasional use by organized groups.

### **Decision to Use a Portion of DeReef Park for Non-recreation Purposes**

The LWCFA conversion regulations at 36 C.F.R. 59.3(b)(1) require that all practical alternatives to the proposed conversion have been evaluated. This evaluation is to be conducted by the project sponsor and serve as background information in the application for a conversion. It is not intended to be included in the scope of analysis for the NEPA environmental assessment since the decision to use a Section 6(f)(3) restricted park for non-recreation purposes is not a federal decision. However, the information is provided here as background information.

The Infill Project began in the early 2000s when a developer proposed to the City the construction of a planned unit infill residential project on properties abutting the north and south sides of Morris Street. The Project included a portion of DeReef Park. The proposal called for 0.954+/- acres of the Park to be put to non-recreational use. The remaining 0.346+/- acres portion of the Park would remain a public park, as would other portions of the Infill Project.

The City Planning Department endorsed the Infill Project, viewing it as a means of stabilizing this area of Morris Street that was in a state of decline and of securing for public recreational use a portion of the site that once housed the first African American public school in the City (the "Simonton Property"). The properties under the control of the developer included lands on the south side of Morris Street, across from DeReef Park, that included the Simonton Property. The City had attempted to acquire the Simonton Property over the years, but had been unsuccessful. The Infill Project contemplated a conveyance of a portion of the Simonton Property to the City for use as a public park. The developer of the Infill Project also controlled properties on the north side of Morris Street which essentially surrounded DeReef Park. The layout and traffic circulation of the Infill Project on the north side of Morris Street was deemed consistent with good urban planning practices, and while its implementation necessitated a loss of a portion of DeReef Park, a recreationally viable reconfigured Park would remain, as would public ownership of a portion of the culturally important Simonton Property.

To implement the Infill Project, it was necessary that properties, including a portion of DeReef Park, be rezoned. State law and City zoning regulations require any rezoning of property to be considered by the Planning Commission, a board of residents appointed by City Council. The Planning Commission must conduct a public hearing on the issue and make a recommendation to the City Council as to the merits of the rezoning. Notice of the public hearing is advertised in a newspaper of general circulation and the properties subject to a rezoning request are posted with

notice thereof along each public street that abuts the affected properties. This process was followed in the rezoning for the Infill Project. As the Infill Project included the Park, the Park was posted with a sign that it was subject to being rezoned, and its address and associated tax map number appeared in newspaper notices of public hearings.

The Planning Commission held a public hearing on the project on August 21, 2002. The Project was fully explained at the hearing, including the change in use to a portion of DeReef Park. Numerous members of the public appeared and spoke at the hearing. At the conclusion of the hearing, the Planning Commission voted to recommend to the City Council that the Project be approved. (See Appendix, Item #6, minutes of the Planning Commission meeting of 8/21/02.)

The City Council conducted a public hearing on the Infill Project on December 10, 2002. An explanation of the project including how it affected DeReef Park was explained. The Council received input from numerous members of the public. At the conclusion of the hearing, the City Council approved the Project and gave first reading to an ordinance approving it. (See Appendix, Item #7, minutes of the City Council meeting of December 10, 2002.) The ordinance was finalized and enacted at the City Council meeting held on December 17, 2002. On January 17, 2008, the City conveyed DeReef Park property to a private party for the Infill Project.

In 2003, the configurations of DeReef Park and Simonton Park as depicted in the Infill Project were modified so that each Park would be a contiguous whole, resulting in more viable recreational areas on either side of Morris Street. A 2006 iteration of DeReef Park depicted the play area being in the northern portion of the Park. The conceptual plan now has the play area in a more visible and accessible location, nearer to Morris Street .

Appendix Item #2 depicts the footprint of the DeReef Park LWCFA Section 6(f)(3) area before the Infill Project. Appendix Item #3 depicts the footprint of the LWCFA Section 6(f)(3) area after implementation of the Project. Appendix Item 8 is a conceptual site plan for the portion of DeReef Park that will remain subject to the LWCFA public outdoor recreation restriction.

### **LWCFA Section 6(f)(3) Conversion Process**

The LWCFA Section 6(f)(3) states "No property acquired or developed with assistance under this section shall, without the approval of the Secretary (delegated to the National Park Service) be converted to other than public outdoor recreation uses." This Section lays out the criteria that must be met for federal approval of the conversion.

The criteria and other federal requirements for LWCFA conversion approval are covered in the "LWCF Program of Assistance to States Post-Completion Compliance Responsibilities" otherwise known as the LWCFA conversion regulations at 36 C.F.R.59.3 (see Appendix, Item #1). The key prerequisites for conversion approval include:

1. All practical alternatives to the conversion have been evaluated. *This evaluation is required of the public sponsor owner (e.g., state, county, city) with legal control of the site and responsible for maintaining the Section 6(f)(3) restricted site for public outdoor recreation purposes, or deciding to use the site for other private and/or non-recreation purposes. The evaluation must be included in the state's submission of the conversion proposal to NPS. This evaluation is not to be confused with the NEPA environmental review of alternatives for the federal action, but is provided in the EA as background information.*

2. The fair market value of the property to be converted has been established and the property proposed for substitution is of at least equal fair market value as established by an approved appraisal. *This is an administrative determination and not subject to environmental review.*

3. The property proposed for replacement is of reasonably equivalent usefulness and location as that being converted. The replacement property need not provide identical recreation experiences or be located at the same site, provided it is in a reasonably equivalent location. Generally, the replacement property should be administered by the same political jurisdiction as the converted property. Property to be converted must be evaluated in order to determine what recreation needs are being fulfilled by the facilities which exist and the types of outdoor recreation resources and opportunities available. The property being proposed for substitution must then be evaluated in a similar manner to determine if it will meet recreation needs which are at least like in magnitude and impact to the user community as the converted site. *Usefulness evaluation addresses the range of outdoor recreation resource opportunities available at the converted and replacement sites and is included in the EA as an impact topic.*

4. Replacement property need not necessarily be directly adjacent to or close by the converted site. *This statement guides the selection of replacement site(s).*

The regulations also allow for delayed replacement for conversions at 36 C.F.R. 59(c) when it is not possible for the replacement property to be identified prior to the State's request for a conversion. In such cases, an express commitment to satisfy Section 6(f)(3) substitution requirements within a specified period, normally not to exceed one year following conversion approval, must be received from the State. This commitment will be in the form of an amendment to the grant agreement. The State proposes to work with its sub-recipient, the City, to secure replacement property within one year of conversion approval.

#### **Partial Section 6(f)(3) Conversion of DeReef Park**

The LWCFA Manual, Chapter 8.E.10, addresses the discovery of conversions that occur prior to NPS approval. In these cases an "after the fact" conversion proposal must be submitted expeditiously to NPS for immediate resolution of the unapproved conversion by conducting a retroactive conversion process.

A LWCF conversion is triggered when a private and/or non-recreation use permanently occurs on Section 6(f)(3) restricted property. In the case of the DeReef Park conversion, the property was conveyed to a private party on January 17, 2008. NPS considers this date the point at which the conversion occurred. Because NPS did not receive a proposal from the State of South Carolina before the DeReef Park property was conveyed to private interests, the NPS conversion review and decision process must be conducted retroactively.

The first step in the conversion process is to verify the original LWCFA Section 6(f)(3) restricted area and then to determine how much of the Section 6(f)(3) area will be converted to private and or non-recreation uses. The City, State and NPS reviewed the administrative record for the original Section 6(f)(3) restricted area and verified the property parcels subject to the restriction (see Appendix, Item #2). Then, any park properties conveyed to a private party as well as any other parcels that would no longer serve a public outdoor recreation purpose were identified to define the extent of the Section 6(f)(3) conversion (see Appendix, Item #3). Finally, it is to be determined by NPS whether or not any remaining park property subject to the Section 6(f)(3) restriction can serve as a viable outdoor recreation unit without dependency on the area to be

converted. In this case, NPS has determined that a viable Section 6(f)(3) area will remain so a partial conversion of DeReef Park is the proposed action alternative.

### **Remaining Section 6(f)(3) DeReef Park**

The remaining Section 6(f)(3) portion of DeReef Park, post-conversion, will operate as a neighborhood park serving nearby dense, urban neighborhoods and offer many of the same outdoor recreational opportunities as did the originally configured Park, but within a smaller, more confined footprint. This remaining portion of the Park will have a modern, equipped play area for children, picnic tables, benches, a drinking fountain and a grassed lawn, as before. Trees on the remaining portion of the Park are being preserved to maintain shade, and landscaping will be installed as well. Space has been set aside to accommodate a small, community garden in the future. An improved amenity of DeReef Park, post-conversion, will be the Praise House structure that will be rehabilitated according to the principles of the Secretary of the Interior's Standards for the Treatment of Historic Properties. The Praise House will provide space for Park programs, direly needed restrooms, and shelter during times of inclement weather. Its new location in the Park on Morris Street is expected to increase its use.

DeReef Park, post-conversion, will still front on Morris Street. Its play area will be framed by a handsome wrought iron fence to provide better definition and to secure safety of users, particularly children, from traffic. The Park will be bordered by neighborhood streets on its north, south and west sides. New street trees will be planted within the Infill Project, to include streets that border the Park. Because the Park will be defined by streets on three of its four sides, traditional access to the Park will be maintained. A conceptual site plan of DeReef Park, post-conversion is in the Appendix, Item #8.

The population served by DeReef Park has changed since the Park was originally constructed. At the time of the conversion in 2008, the population was older, with the largest percentage of population being college age, and the population was more Caucasian than was the case in 1980 or 1990. The housing in the area was mostly rental and a majority of households in the vicinity of the Park were non-family households. (See Appendix, Item #4.)

The remaining portion of DeReef Park, though smaller than the original Park, will continue to provide recreational opportunities to serve its original constituency and the evolving constituency. Though fewer children live in the vicinity, a play area will be available to those who do. The grassed lawn will serve the needs of both the younger population and older populations as a place for exercise, reading and picnicking. The restored historic Praise House will provide restroom facilities, indoor space for Park programs and shelter during times of inclement weather.

### **Section 6(f)(3) Conversion Delayed Replacement**

The conversion regulations at 36 C.F.R. 59.3(c) allow for delayed replacement of converted park property when it is not possible to identify replacement sites prior to the State's request for a conversion (see Appendix, Item #1). In such cases, an express commitment to satisfy Section 6(f)(3) substitution requirements within a specified period, normally not to exceed one year following conversion approval, must be received from the State. This commitment must be in the form of an amendment to the grant agreement. In this case, the State proposes to work with its subrecipient, the City, to secure replacement property within one year of conversion approval. The replacement site(s) must meet the replacement criteria in the conversion regulations at 36



C.F.R. 59.3(b), including providing recreation opportunities that are reasonably equivalent in recreation usefulness and location as the converted parcel at DeReef Park.

## **CHAPTER 2 - DESCRIPTION OF ALTERNATIVES**

The range of alternatives available to the National Park Service for consideration is 1) a "no action" alternative, where no proposal is submitted to NPS for review so there would be no federal action; and 2) a "proposed action" alternative where NPS receives, reviews and approves a proposal request.

**No Action Alternative:** NPS does not receive a proposal from the State to convert a portion of DeReef Park pursuant to the LWCFA conversion regulations at 36 C.F.R. 59.3 even though DeReef Park is conveyed to a private interest for non-public and non-outdoor recreation purposes.

**Proposed Action Alternative:** The Proposed Action Alternative is the NPS retroactive approval of a conversion proposal from the State to convert a 0.954+/- acre portion of DeReef Park, including a State commitment to require the City, the State's LWCFA subrecipient, to secure replacement property within one year of NPS conversion approval pursuant to the federal LWCFA conversion regulations at 36 C.F.R. 59.3(c). The remaining LWCFA Section 6(f)(3) restricted 0.346 acre portion of DeReef Park will continue to be used for public outdoor recreation purposes as a smaller yet viable neighborhood park area.

## **CHAPTER 3 - AFFECTED ENVIRONMENT**

This chapter describes the existing condition of any significant resources and issues associated with the original LWCFA Section 6(f)(3) restricted DeReef Park that could be impacted by implementing any of the two alternatives described in Chapter 2. The affected environment descriptions serve as the baseline for predicting impacts to resources that could occur if any of the alternatives under consideration (including no action) are implemented. Note that because the private, non-recreation use of a portion of DeReef Park began in January 17, 2008, NPS uses this date as the time the conversion occurred so the following baseline description of affected resources reflects a condition as of January 17, 2008.

An assessment of the original LWCFA Section 6(f)(3) restricted area of DeReef Park to determine any significant resources and issues at the time of the conversion that may likely have been impacted by the partial conversion was done by S&ME, an environmental engineering firm. That assessment indicated the following resources and issues for the potential to be impacted most by the either of the two alternatives:

**Floodplains:** According to FEMA's Flood Insurance Rate Map (see Appendix, Item #9), all of DeReef Park is located in floodzone AE, requiring an elevation of approximately 13 feet. This means that, to comply with FEMA regulations, the first habitable floor of a structure must be elevated 13 feet above Base Flood Elevation ("BFE"). The elevation of DeReef Park above BFE ranges from 5.5' to 11.5', so depending on where a structure is located in the Park would determine how high the structure would need to be elevated to comply with FEMA requirements. At the lowest point in the Park (5.5'), to meet the FEMA 13' BFE requirement, the first habitable

floor of a structure would have to be elevated 7.5' above the ground. A structure in the highest part of the Park (11.5') would have to be elevated 2.5' above ground. The only structure in the Park, the Praise House, did not meet the elevation requirements of FEMA.

Because of the elevation of the Park, it was subject to periodic ponding at times of heavy rains, to include areas around the Praise House.

**Park and Outdoor Recreation Resource Usefulness and Opportunities:** DeReef Park is a neighborhood park totaling 1.3+/- acres. The entire 1.3+/- acre Park has a federal restriction to outdoor recreation purposes under the LWCFA Section 6(f)(3). The Park serves a residential area within a half-mile radius of the site. Most users walk to the Park. Street parking is available as well as a few parking spaces inside the Park in a public right-of-way called DeReef Court. Public access into the Park is from Morris Street and DeReef Court. Park features include walkways; an open lawn area; shade trees; a drinking fountain; benches; picnic and game tables; play equipment; small spray-play feature; and a small building (see "Historic Resources" topic below). The Park offers passive outdoor recreation opportunities for users including: relaxation; picnicking; playground play; informal play including Frisbee and ball tossing; and small group gatherings.

**Aesthetics:** The visibility of DeReef Park from Morris Street, as originally constructed, was partially obstructed by private buildings and foliage. This condition persisted as of January 17, 2008, presenting an isolated and unsafe impression. By 2008, the Park was in a relative state of decline. Its amenities were outdated. The Praise House was boarded up and inaccessible for use by the general public.

**Historic Resources:** DeReef Park is located within a historic district that has been determined to be eligible for listing in the National Register. The Praise House is a contributing resource within this historic district. The structure was erected in the first quarter of the twentieth century. A survey conducted by the South Carolina Department of Archives and History (the State Historic Preservation Office or "SHPO") concluded that the façade of the building had been altered, rendering it impossible to determine the original appearance or architectural theme of the building. An in-house survey conducted by a city architectural planner could not confirm if the building had been constructed at 9 DeReef Court or whether it had been moved there. From 1943 until 1988, when it was purchased by the City, the Praise House was owned by the Sons and Daughters of Joseph Society No. 9. When the City purchased 9 DeReef Court, the Praise House was in a state of disrepair. Its foundation was inadequate and its interior was subject to the elements due to inefficient or broken windows and a deteriorated exterior. The steeple on the building eventually fell.

The City whitewashed the House to improve its exterior appearance as it related to the Park, but eventually was forced to board up the building for safety reasons. In 1996, the City was awarded a grant from the SHPO office to commission drawings for the rehabilitation of the structure. The City retained architect George Dowis to draw the plans. The plans were reviewed and approved by the SHPO as well as the City's Board of Architectural Review (the "BAR"). A lack of funding has precluded the rehabilitation. By 2008, the Praise House remained in a dilapidated, unsafe condition.

**Socioeconomics/Minority and Low Income Population:** The 2000 census data reveals that the African American population in the area served by the Park had declined to about 55.3%, a drop of about 21% since 1990. The population of those under 18 years of age was around 15.8%, and non-family households grew in excess of 51% of the households. The college age population

(18-24 years of age) increased from 21.6% in 1990 to 34.7% in 2000. Median household income of \$14,910 remained lower than the overall City median of \$35,395.

**Resources considered but dismissed from detailed analysis because of less than minor impacts**

**Circulation:** DeReef Park is located within an urban street system. The original Park had some space for off-street parking. The Park, post-conversion, will remain within the urban grid system. Off-street parking will no longer be available. The Park, as converted, will be designed as a walk-to park, consistent with its purpose to serve those living within a half mile of its radius. Street parking will be available but off-street parking in the park area will be eliminated. Access to the Park will remain from DeReef Court and Morris Street.

**Threatened/Endangered Species:** The United States Fish and Wildlife Service has concurred with the determination that there are no known occurrences of threatened or endangered species in the area of DeReef Park (see Appendix, Item #10.)

## **CHAPTER 4 – ENVIRONMENTAL IMPACTS**

This chapter describes how the existing condition of the resources described in Chapter 3 would change as a result of the implementation of either alternative. The impacts are assessed to determine whether there would be significant environmental effects.

### **Floodplains**

**No Action:** The Praise House will remain in an AE flood zone, below BFE.

**Action:** The Praise House will be relocated to the southeast corner of the Park, still in an AE flood zone. In conjunction with the relocation, the foundation of the Praise House will be slightly raised. This slight raise in elevation, along with drainage improvements required of the developer by the Infill Project, will provide better protection against flooding.

### **Park and Outdoor Recreation Resource Usefulness and Opportunities**

**No Action:** The LWCFA Section 6(f)(3) restricted DeReef Park is reduced in size by 0.954+/- acres, leaving a 0.346+/- parcel intact for outdoor recreation uses (see Appendix, Item #3). The loss of LWCFA Section 6(f)(3) restricted outdoor recreation property is not mitigated with replacement property creating a reduction of the total nationwide estate of federally restricted public outdoor recreation resources including within the State and City. By not replacing the lost outdoor recreation resources per the conversion regulations, the State and City would be in non-compliance with the LWCFA Program. As such, NPS may withhold payment of federal funds to the State/City, withhold approval of future projects of the State/City, and take such other actions deemed appropriate under the circumstances until compliance or remedial action has been accomplished by the State to the satisfaction of NPS (see LWCFA Manual Chapter 8.N regarding Penalties for Failure to Comply with Federal Laws and Regulations).

**Action:** The partial conversion will result in a change of ownership to a private party of 0.954+/- acres of the 1.3+/- acre DeReef Park for private, non-outdoor recreation uses. This portion of the Park will be lost to public, outdoor recreational use. Types of facilities located on this converted portion of the Park include parking, some play equipment, a water fountain, game tables and a grassy area. The converted portion of the Park also included the Praise House, however, the Praise House was relocated to the remaining 0.346+/- acre area of the Park where it will be rehabilitated for public outdoor recreation support uses. The City intends to mitigate this 0.954+/- acre loss to its recreational inventory with required replacement sites(s).

The partial conversion will result in the size reduction of an outdoor recreation area from 1.3+/- acres to 0.346+/- acres. Most recreational experiences accommodated by the original DeReef Park will be accommodated at the remaining Section 6(f)(3) park area.

As converted, the Park will provide a playground area, open space with shade trees, new restrooms and sheltered program space in the rehabilitated Praise House. The converted Park will maintain direct frontage on Morris Street. The area of the Park will be more defined, and its play area better secured. It is anticipated that users of the converted Park will be predominantly from surrounding neighborhoods and will walk to the Park, as was the case with DeReef Park prior to the conversion. The loss of on-site parking should not affect the use of the converted Park or the residents in its vicinity. Street parking will still be available. The remaining Section 6(f)(3) restricted DeReef Park totaling 0.346+/- acres will comprise a viable outdoor recreation area.

The future replacement site(s) will offer reasonably equivalent recreation opportunities to replace those removed as a result of the conversion.

### **Aesthetics**

**No Action:** DeReef Park will remain partially obscured from Morris Street, as will the visibility of the Praise House. Play equipment requires updating. Funding for the rehabilitation of the Praise House would be postponed, pending the securing of funding.

**Action:** DeReef Park, post-conversion, will have improved visibility from Morris Street and from the other streets within the Infill Project that abut it. The look of the Park will be improved with the installation of an attractive wrought iron fence that will define and secure the play area. New sidewalks will border the Park, and the Praise House will be restored at its new, more prominent, and publicly visible location within the remaining Park.

### **Historic Resources**

**No Action:** The Praise House will remain *in situ*. Its rehabilitation will depend on the availability of future funding.

**Action:** The Praise House will be renovated pursuant to plans approved by the SHPO in 1996, updated to conform to current code requirements, and the BAR Charleston Standards that are based on the *Secretary of the Interior's Standards for Treatment of Historic Properties*. The structure will have restroom facilities and will comply with requirements of the Americans with Disabilities Act.

The 0.354+/- portion of DeReef Park remaining after the partial conversion will include the

structure, which was moved from its location at 9 DeReef Court to the southeast corner of the Park on Morris Street. The orientation of the structure is on a north-south axis, as opposed to the east-west axis when at 9 DeReef Court. At its new location, the Praise House is more visible and accessible to the public. Its adaptive reuse for recreational programs, such as summer camps, and its publicly available restroom facilities, will complement the recreational opportunities to be provided by DeReef Park, as converted, and will enhance the comfort of Park users. The Praise House is located in and is a contributing resource to a historic district that has been determined eligible for the National Register. Its renovation will preserve a deteriorating structure. Public ownership and use of the structure will be maintained.

This partial conversion is an undertaking subject to Section 106 of the National Historic Preservation Act, as amended, Public Law 89-665; U.S.C. 470 et seq. The National Park Service is consulting with the SHPO and interested parties and determined that the partial conversion will not adversely affect historic properties eligible for the National Register of Historic Places, specifically the Praise House (see Appendix, Item #11). Objections were raised during the review period for the assessment of effect determination and the NPS is reviewing additional information to continue the 106 consultation. Comments resulting from this EA will be incorporated into the on-going consultation as well.

### **Socioeconomics/Minority and Low Income Populations**

**No Action:** When DeReef Park was constructed and opened, the populations served by the Park were predominately African American households, with median incomes below the City-wide median. Census data from 1990 shows a gradual change to the make-up of the areas in the vicinity of the Park by race, the area trending more Caucasian, from 87% African American in 1980 to 76.3% African American in 1990. Household incomes continued below the City-wide median. By 2000, the African American population had dropped to about 55% of the population, a decrease of over 21% since 1990. Nonfamily households constituted over half of the households. Thirty-four (34%) percent of the population was college age, over twice the population of those under the age of 18 (16.7%). Median household income still lagged behind the City-wide median, but the gap had closed somewhat. (See Appendix, Item #4). These demographic changes occurred prior to the implementation of the Infill Project and prior to the partial conversion of DeReef Park. The Park will remain a neighborhood park, designed for passive uses with equipment for young children.

**Action:** The demographics of the area have changed since DeReef Park was originally planned in the 1980s and opened in the 1990s. This change in demographics had occurred prior to the Infill Project coming on line and prior to the conversion. The area in and around DeReef Park is now mostly populated by nonfamily households of college or young professional age. The African American population of the area dropped from 87% in 1980 to 55.3% in 2000 (see Appendix, Item #4).

DeReef Park, as reconfigured, will maintain the amenities of the original Park for the service population within a half-mile radius, to include updated, modern play equipment for children. Its lawn will still accommodate passive recreational pursuits, such as reading, picnicking, light exercise and general relaxation. This partial conversion will further allow for the rehabilitation and adaptive reuse for recreational purposes of the Praise House, to include restroom facilities and indoor park program space. This added amenity will benefit all users of the Park and preserve for public use and enjoyment an important, cultural resource. Although the demographics have changed, the investment in the extant Praise House will preserve an important part of the historic

African American community that thrived during the nineteenth and twentieth centuries and will connect modern park users with an historic community resource that contributes to the history of African Americans in Charleston.

The replacement sites will mitigate the loss of public outdoor recreation resources and opportunities pursuant to the conversion regulations at LWCFA 36 C.F.R. 59.3.

## **CHAPTER 5 - COORDINATION AND CONSULTATION**

The following individuals provided input in the compilation of this Environmental Assessment:

Adelaide S. Andrews, Esq.  
Frances I. Cantwell, Esq.  
Susan J. Herdina, Esq.  
City of Charleston Legal Department

Katie McKain, Senior Planner  
Philip Overcash, Planner  
City of Charleston Department of Planning, Preservation and Sustainability

Dennis Dowd, Assistant Director of Preservation and Design  
City of Charleston Department of Planning, Preservation and Sustainability

Tracy McKee, GIS Director  
City of Charleston Department of Information Technology

Matt Compton, Special Projects Administrator  
City of Charleston Department of Parks

Chuck Black, P.E., LEED AP  
Vice President, Senior Environmental Engineer

Aaron Brummitt, RPA  
Senior Archaeologist  
S&ME, Inc.

#### APPENDIX # 4

**Project: DeReef Park LWCf Conversion**  
**LWCFA Grants 45-00856, 45-00985**  
**Proposed Replacement Site (1 of 3):**  
**Simonton Park 6(f)(3) Map**

 Simonton Park 6(f)(3) Boundary -  
0.278 acres

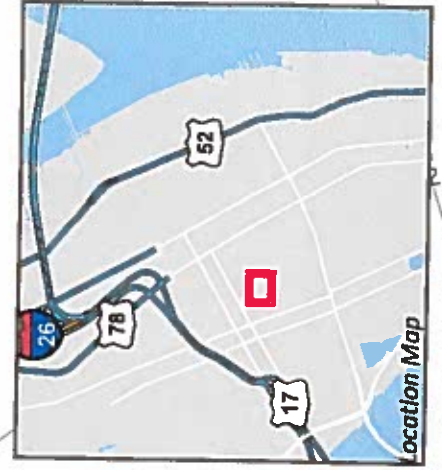
 DeReef Park Remaining Area

 Public Access Locations

0 35 70 Feet  
1 inch = 70 feet



map provided by City of Charleston GIS  
printed: 2/22/2017











## APPENDIX # 5

**Project: DeReef Park LWCF Conversion**  
**LWCF Grants 45-00856, 45-00985**  
**Proposed Replacement Site (2 of 3):**  
**35 Folly Road Park 6(f)(3) Map**

-  Proposed Replacement Sites
-  10' Bike Path Easement
-  Variable Width Fire Access, Utilities, and Public Sidewalk Easement
-  Public Access Locations

0 35 70 Feet  
 1 inch = 100 feet  
 map provided by City of Charleston GIS  
 printed: 7/11/2017



SWANNAH HWY

0002

17

ALBEMARLE RD RAMP

FOLLY ROAD BLVD

17

Tax Map Number  
421-11-00-058

0.884 ac

0.167 ac

Tax Map Number  
421-11-00-063

HERBERT U FIELDING CONNECTOR

ALBEMARLE RD

61

61

Simington Park

Location Map

(2) ACCESSIBLE PARKING  
(3) REGULAR SPACES  
(possibly 4)

MULTI-USE TRAIL OVER  
ASHLEY RIVER BY  
COUNTY

to Hwy 61

from Hwy 61

U.S. 17 NORTH

ROAD BLVD.  
(100)

MAINT. MUDS

SHADE LAWN 2' x 10'

OPEN LAWN

MULTI-USE TRAIL

PROP. LINE  
@ SW

OLD  
RINT

REINFORCED TURF @  
FIRE ACCESS EASEMENT

FITNESS  
CLUSTER

NATIVE  
TREES

FULLY  
ARTMENTS

## APPENDIX # 6



**Project: DeReef Park LWCFA Conversion**  
**LWCFA Grants 45-00856, 45-00985**  
**Proposed Replacement Site (3 of 3):**  
**64 and 66 DeReef Court 6(f)(3) Map**



Proposed Replacement Sites



Simonton Park Boundary



Current Parcels Boundaries 2017



Public Access Locations



1 inch = 45 feet  
map provided by City of Charleston GIS  
printed: 12/4/2017

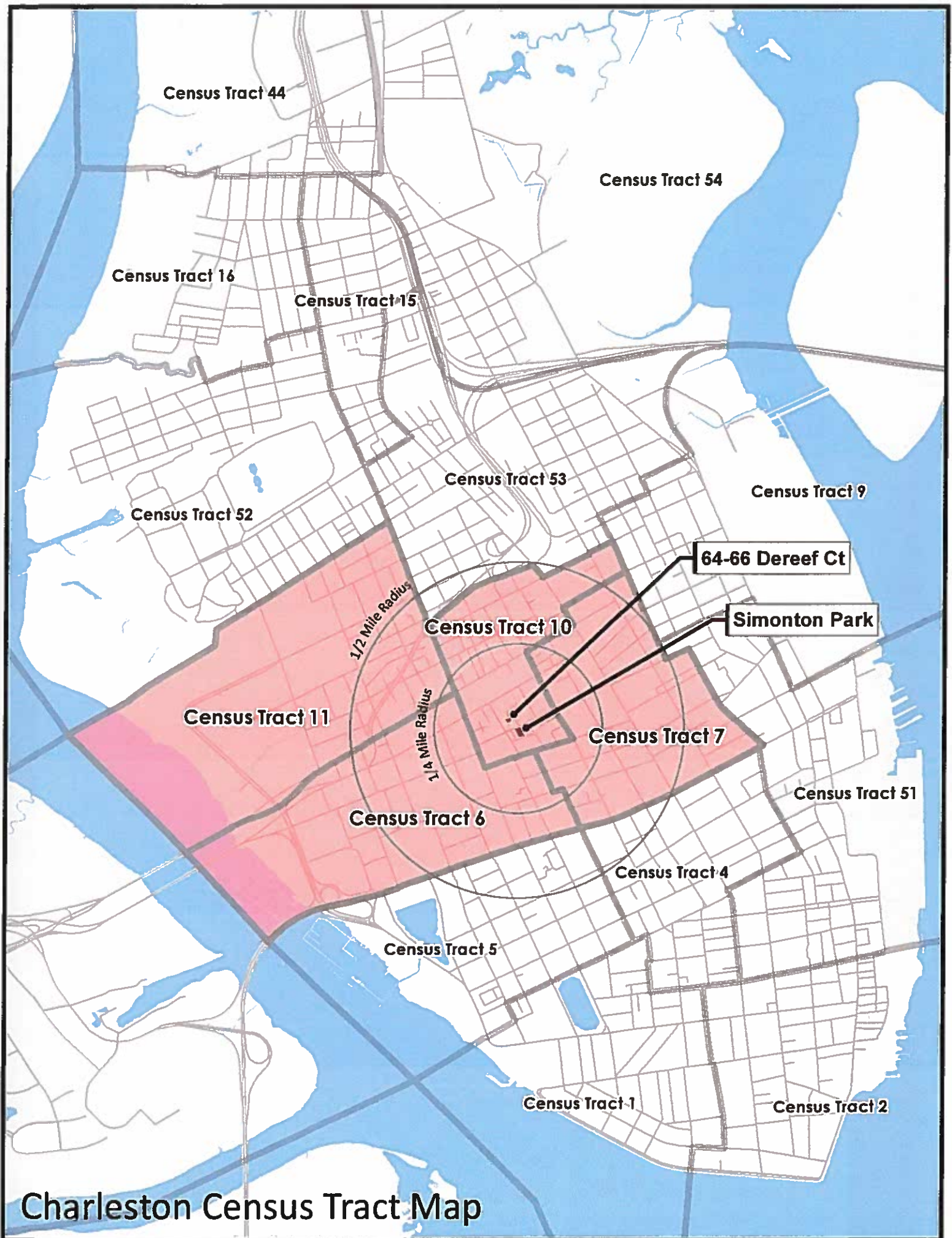


Location Map

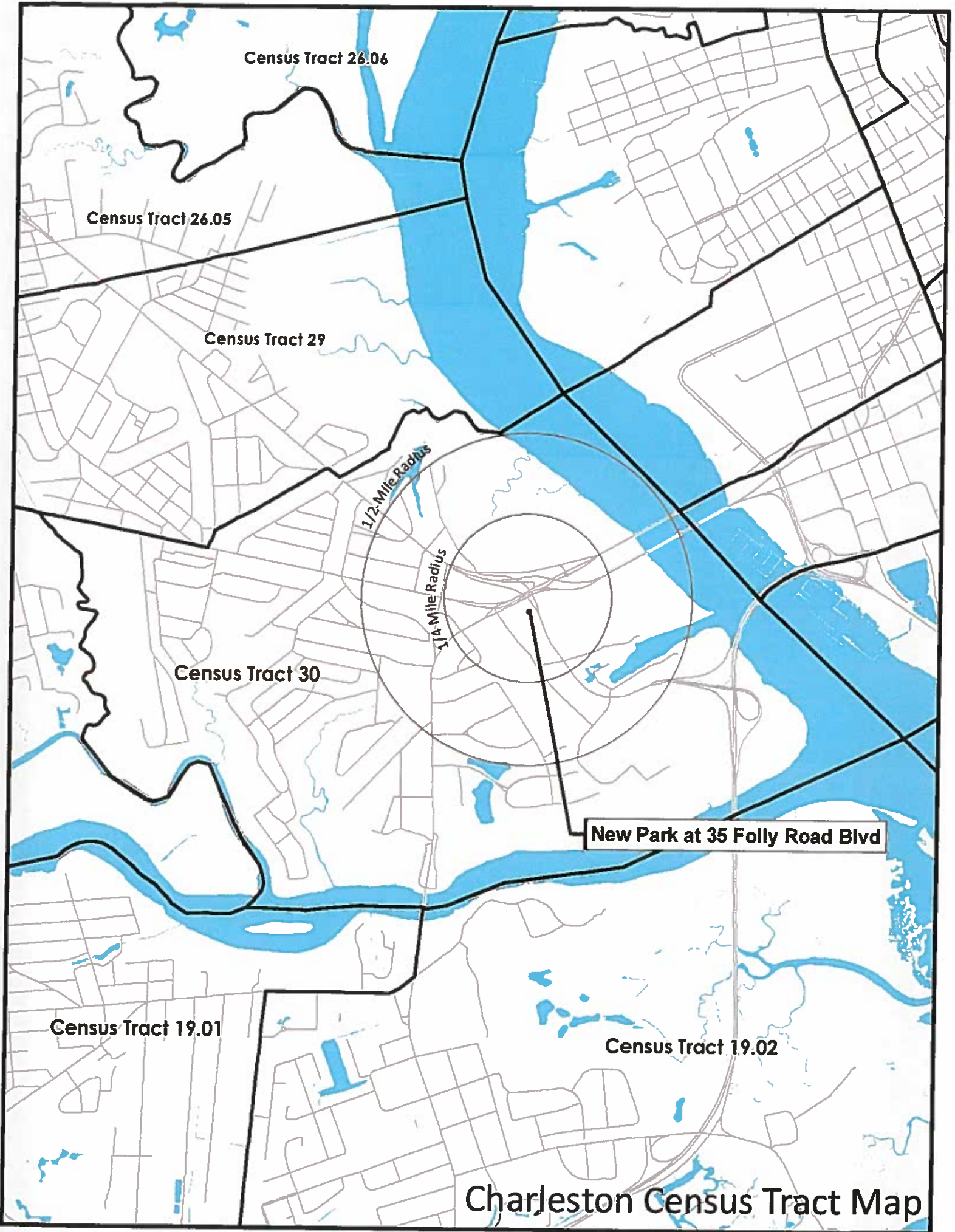


## APPENDIX # 7





Charleston Census Tract Map



Census Tract 26.06

Census Tract 26.05

Census Tract 29

Census Tract 30

Census Tract 19.01

Census Tract 19.02

New Park at 35 Folly Road Blvd

Charleston Census Tract Map



# US Census Bureau Demographics Data

	35 Folly Road Blvd*		Simonton Park & Dereef Ct**		City of Charleston (City-wide)	
	2010 (ACS 2008-12)		2010 (ACS 2008-12)		2010 (ACS 2008-12)	
Total Population	Total	Percent	Total	Percent	Total	Percent
	3,160		8,759		120,903	
Total Population:	3,160		8,759		120,903	
Male	1,479	46.8%	4,003	45.7%	56,761	47.0%
Female	1,681	53.2%	4,756	54.3%	64,142	53.0%
Total Population:	3,160		8,759		120,903	
Under 5 years	174	5.5%	196	2.2%	7,158	5.9%
5 to 9 years	166	5.3%	327	3.7%	6,546	5.4%
10 to 14 years	133	4.2%	162	1.9%	5,643	4.7%
15 to 17 years	77	2.4%	206	2.4%	3,389	2.8%
18 to 24 years	249	7.9%	4,461	50.9%	20,020	16.6%
25 to 34 years	556	17.6%	1,570	17.9%	22,303	18.4%
35 to 44 years	431	13.6%	377	4.3%	14,558	12.0%
45 to 54 years	417	13.2%	437	5.0%	14,226	11.8%
55 to 64 years	400	12.7%	457	5.2%	12,607	10.4%
65 and 74 years	213	6.7%	283	3.2%	7,846	6.5%
75 to 84 years	213	6.7%	226	2.6%	4,522	3.7%
85 years and over	131	4.2%	57	0.7%	2,085	1.7%
Total Population:	3,160		8,759		120,903	
White	3,076	97.3%	5,373	61.3%	84,101	69.6%
Black	29	0.9%	2,822	32.2%	32,393	26.8%
Housing units	1,658		4,233		58,792	
Occupied Housing Units:	1,498		3,308		50,811	
Owner Occupied	1,058	70.6%	786	23.8%	27,095	53.3%
Renter Occupied	440	29.4%	2,522	76.2%	23,716	46.7%
Non-Family Households	721	48.1%	2,472	74.7%	24,754	48.7%
Median Household Income In 2013 Dollars	\$79,297		\$25,435		\$50,873	

Source: US Census Bureau decennial Census data (SF-3); American Community Survey (ACS) data.

\*Census Tract 30

\*\*Aggregated Census Tracts 6, 7, 10 & 11

## APPENDIX # 8

## **Cantwell, Frances**

---

**From:** Aaron Brummitt <ABrummitt@smeinc.com>  
**Sent:** Tuesday, October 11, 2016 1:56 PM  
**To:** Cantwell, Frances  
**Subject:** FW: Simonton Park, Morris Street, Charleston, SC, FWS Log. No. 2016-I-0692  
**Attachments:** 20160914\_ltr\_S&ME\_SCFO\_Simonton Park-Morris Street, Charleston, SC.pdf; charleston\_county.pdf

**From:** April Punsalan [[mailto:april\\_punsalan@fws.gov](mailto:april_punsalan@fws.gov)]  
**Sent:** Tuesday, October 11, 2016 1:12 PM  
**To:** Chris Daves <[CDaves@smeinc.com](mailto:CDaves@smeinc.com)>; Bret Davis <[BDavis@smeinc.com](mailto:BDavis@smeinc.com)>  
**Subject:** Simonton Park, Morris Street, Charleston, SC, FWS Log. No. 2016-I-0692

Dear Mr. Davis and Mr. Daves,

The U.S. Fish and Wildlife Service (Service) received your Protected Species Assessment for the Simonton Park located on Morris Street in Charleston, SC (copy attached). Upon review of your assessment, we find that it is consistent with the Service's clearance authorization requirements.

Please visit our website: <https://www.fws.gov/charleston/Regulatory.html> and download the "Species and Habitat Assessment Clearance Letter/No Effect" to serve as our consultation on your proposed project submittal.

For future projects, the Service recommends that you review the Clearance Letter prior to submitting similar project proposals to our office. If your project proposal meets the requirements you may download the letter provided on the website to reflect our concurrence or agreement. However, obligations under the Endangered Species Act of 1973 must be reconsidered if: (1) new information reveals impacts of this identified action that may affect listed species or designated critical habitat in a manner not previously considered; (2) this action is subsequently modified in a manner, which was not considered in this assessment; or (3) a new species is listed or designated critical habitat is determined that may be affected by the identified action.

For informational purposes only, the Service has included a list of species that have been petitioned for listing under the Endangered Species Act as well as Candidate Species. These species are collectively referred to as "At-Risk Species" (ARS). We have included a list of the ARS that may occur in Charleston County, South Carolina (copy attached). Although there are no Federal protections afforded to ARS, please consider including them in your survey efforts. Incorporating proactive measures to avoid or minimize harm to ARS may improve their status and assist with precluding the need to list these species. Additional information on ARS can be found at:

<http://www.fws.gov/southeast/candidateconservation>

If you have any questions on this matter, please do not hesitate to contact me.

April

April Punsalan, Botanist  
U.S. Fish and Wildlife Service

South Carolina Field Office  
176 Croghan Spur Road, Suite 200  
Charleston, SC 29407  
Office: (843) 727-4707 ext. 218  
Fax: (843) 727-4218  
[April\\_punsalan@fws.gov](mailto:April_punsalan@fws.gov)

Please visit our Web Page for information about our office: [www.fws.gov/charleston](http://www.fws.gov/charleston)

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## United States Department of the Interior

### FISH AND WILDLIFE SERVICE

176 Croghan Spur Road, Suite 200  
Charleston, South Carolina 29407



### U.S. Fish and Wildlife Service Clearance Letter for Species and Habitat Assessments

The U.S. Fish and Wildlife Service (Service) is one of two lead Federal Agencies mandated with the protection and conservation of Federal trust resources, including threatened and endangered (T&E) species and designated critical habitat as listed under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) (ESA). Development of lands in South Carolina have the potential to impact federally protected species. Accordingly, obligations under the ESA, National Environmental Policy Act (NEPA), Clean Water Act (CWA), Federal Power Act (FPA), and other laws, require project proponents to perform an environmental impact review prior to performing work on the site. These projects may include a wide variety of activities including, but not limited to, residential or commercial developments, energy production, power transmission, transportation, infrastructure repair, maintenance, or reconstruction of existing facilities on previously developed land.

Project applicants, or their designated representatives, may perform initial species assessments in advance of specific development proposals to determine the presence of T&E species and designated critical habitat that are protected under the ESA. These reviews are purposely speculative and do not include specific project or site development plans. Many of these speculative proposals are for previously developed or disturbed lands such as pasture lands, agricultural fields, or abandoned industrial facilities. Due to historical uses and existing conditions, these sites often do not contain suitable habitat to support T&E species. Therefore, an assessment may conclude that any future development of the site would have no effect to T&E species or adversely modify designated critical habitat. If the applicant, or their designee, determines there is no effect or impact to federally protected species or designated critical habitat, no further action is required under the ESA.

#### Clearance to Proceed

For all sites with potential projects that have no effect or impact upon federally protected species or designated critical habitat, no further coordination with the Service is necessary at this time. This letter may be downloaded and serve as the Service's concurrence or agreement to the conclusions of the species assessment. Due to obligations under the ESA potential impacts must be reconsidered if: (1) new information reveals impacts of this identified action may affect any listed species or critical habitat in a manner not previously considered; (2) this action is subsequently modified in a manner which was not considered in this assessment; or (3) a new species is listed or critical habitat is designated that may be affected by the identified action.

**Please note this Clearance Letter applies only to assessments in South Carolina but may not be used to satisfy section 7 requirements for projects that have already been completed or currently under construction.**

If suitable habitat for T&E species or designated critical habitat occurs on, or nearby, the project site, a determination of no effect/impact may not be appropriate. In these cases, direct consultation requests with the Service should be initiated. Additional coordination with the Service may also be required if the potential project requires an evaluation under another resource law such as, but not limited to, NEPA, CWA, FPA, and the Coastal Zone Management Act.

### **Northern Long-eared Bat Consideration**

The Service issued a nationwide programmatic biological opinion (PBO) for the northern long-eared bat (*Myotis septentrionalis*, NLEB) on January 5, 2016. The PBO was issued pursuant to section 7(a)(2) of the ESA to address impacts that Federal actions may have on this species. In addition, the Service published a final 4(d) rule on January 14, 2016, which details special consultation provisions for Federal actions that may affect the NLEB. Briefly, the PBO and the 4(d) rule allow for "incidental" take of the NLEB throughout its range under certain conditions. Take is defined in section 3 of the ESA as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. Further, incidental take is defined as take that results from, but is not the purpose of, carrying out an otherwise lawful activity. Under the PBO and 4(d) rule, all incidental take of the NLEB is exempted from the ESA's take prohibitions under certain conditions. However, incidental take is prohibited within one quarter mile from known hibernacula and winter roost, or within 150 feet from a known maternity roost tree during the months of June and July.

In consideration of known hibernacula, winter roosts, and maternity roost tree locations in South Carolina, this letter hereby offers blanket concurrence for a may affect, but is not likely to adversely affect determination for the NLEB if the proposed work occurs more than one quarter mile from known hibernacula, winter roosts, or is further than 150 feet from a known maternity roost trees. If an activity falls within one-quarter mile of hibernacula or winter roost or within 150 feet of a maternity roost tree additional consultation with the Service will be required. As a conservation measure for all projects it is recommended that all tree clearing activities be conducted during the NLEB inactive season of November 15<sup>th</sup> to March 31<sup>st</sup> of any given year.

The Service appreciates your cooperation in the protection of federally listed species and their habitats in South Carolina.

Sincerely,

  
Thomas D. McCoy  
Field Supervisor





## United States Department of the Interior

### FISH AND WILDLIFE SERVICE

176 Croghan Spur Road, Suite 200  
Charleston, South Carolina 29407



June 8, 2017

Mr. Bret Davis  
Mr. Chris Daves  
S&ME, Inc.  
620 Wando Park Boulevard  
Mt. Pleasant, SC 29464

Re: National Park Service-DeReef Park Replacement, Charleston, Charleston County, South Carolina, FWS Log No. 2017-I-0608

Dear Mr. Davis and Mr. Daves:

The U.S. Fish and Wildlife Service (Service) has received your May 30, 2017, letter requesting our response on the protected species assessment for a parcel located at 35 Folly Road in the City of Charleston, Charleston County, South Carolina. This parcel is to be considered as a replacement park due to restrictions on the City's DeReef Park located downtown Charleston. Funding for the project will be provided by the National Park Service's Land and Water Conservation Fund.

As described in your letter the subject parcel was an automobile junkyard and service center. In actuality the parcel was owned by Turkey's Towing Company specializing in towing services. Regardless, the parcel has recently been converted to a turf grassed field that is directly adjacent to a multifamily residential community. It is the Service's policy that we do not generally enter into section 7 consultation pursuant to the Endangered Species Act (ESA) when applicants are seeking "after-the-fact" authorization for projects that have already been completed or when impacts may have already occurred. Such a practice does not promote the conservation of listed species and critical habitat, an obligation for both the action agency and the Service under the ESA.

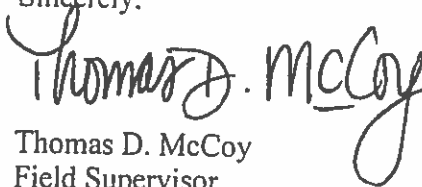
When a project has been completed, as is the case with the turfed DeReef Park replacement site, it becomes part of the environmental baseline. The environmental baseline includes the past and present impacts of all Federal, State, or private actions and other human activities in an action area, the anticipated impacts of all proposed Federal projects in an action area that have already undergone formal or early section 7 consultation, and the impact of State or private actions that are contemporaneous with the consultation in process (*See* 50 CFR 402.02). Future Federal actions at this site will require a section 7 review.

The Service's policy is fully supported by the ESA and its implementing regulations. Both the ESA and the regulations are based on an underlying assumption that consultation will occur prior to any action being taken. Section 7(a)(2) of the ESA states that each Federal agency shall, in consultation with the Secretary, *insure* that any action authorized, funded, or carried out by such agency is *not likely to jeopardize* the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat (See 16 United States Code 1536(a)(2) (emphasis added)). Title 50 Code of Federal Regulations (CFR) 402.02 defines "jeopardize the continued existence of" as "to engage in an action that reasonably *would be expected*, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of the species in the wild by reducing the reproduction, numbers, or distribution of that species" (See 50 CFR 402.02 (emphasis added)). In the Service's opinion, the word "*insure*" and the phrases "*not likely to jeopardize*" and "*would be expected*" clearly contemplate consultation on a proposed action and not an action that has already been completed. The protections of the ESA insure against jeopardy. If the ESA and its implementing regulations contemplated after-the-fact consultation, there would be no need for the Service to consider and recommend reasonable and prudent alternatives in order to avoid the *likelihood* of jeopardy or reasonable and prudent measures to minimize the amount or extent of *anticipated* incidental take. Clearly, S&ME's species assessment was based on a review of historic aerial photographs as well as past and present uses of the current site in a heavily developed urban area.

The Service notes that your protected species assessment concluded that there are no impacts to the protected Federal species listed for Charleston County at DeReef Park replacement site. A no impact determination equates to a no effect determination which does not require consultation under the ESA. In addition our review of the submitted project information and in comparison to our species and habitat database based on its current state, we found no known occurrences of any threatened or endangered species within the project area. Please note that obligations under the ESA must be reconsidered if: (1) new information reveals impacts of this identified action may affect any federally listed species or critical habitat in a manner not previously considered; (2) this action is subsequently modified in a manner, which was not considered in this assessment; or (3) a new species is listed or critical habitat is designated that may be affected by the identified action.

To reiterate, it is the Service's policy that we do not enter into section 7 consultation for after-the-fact completed actions. We hope the above information is helpful. If you need further assistance, please contact Mr. Mark Caldwell at (843) 727-4707 ext. 215, and reference FWS Log No. 2017-I-0608.

Sincerely,

  
Thomas D. McCoy  
Field Supervisor

TDM/MAC

## Cantwell, Frances

---

**From:** Bret Davis <BDavis@smeinc.com>  
**Sent:** Friday, January 12, 2018 9:57 AM  
**To:** Cantwell, Frances  
**Cc:** Aaron Brummitt  
**Subject:** FW: 64-66 Dereef Court PSA  
**Attachments:** 64-66 Dereef PSA FINAL.PDF; 20150519\_ltr\_SCFO\_NPS\_DeReef Park, Charleston, SC.pdf

Frances-

Please see the email response below from USFWS for the Dereef Court properties. As this area was included in a previous PSA and nothing new was discovered, the previous letter will serve for this property as well. Both the submittal and the prior letter are attached for your convenience.

Feel free to give me a call if you have any questions.

Bret

---

**Bret K. Davis, P.G.**

Project Geologist



S&ME  
620 Wando Park Blvd  
Mt Pleasant, SC 29464 [map](#)  
O: 843.884.0005  
M: 843.437.5774  
[www.smeinc.com](http://www.smeinc.com)  
[LinkedIn](#) | [Twitter](#) | [Facebook](#)

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---

**From:** Mark Caldwell [[mailto:mark\\_caldwell@fws.gov](mailto:mark_caldwell@fws.gov)]  
**Sent:** Friday, January 12, 2018 8:19 AM  
**To:** Bret Davis <[BDavis@smeinc.com](mailto:BDavis@smeinc.com)>  
**Cc:** Tom McCoy <[thomas\\_mccoy@fws.gov](mailto:thomas_mccoy@fws.gov)>  
**Subject:** RE: 64-66 Dereef Court PSA

Mr. Davis,

The Service has received your request for a threatened and endangered species review (copy attached) for two parcels, 64 & 66 DeReef Court, in the City of Charleston, SC. These two parcels were encompassed in a previous consultation request (FWS Log# 2015-I-0358) from the National Park Service in 2015 which covered a larger area. Our response to that request was sent on May 19, 2015, and is also attached. As there has been no new

discoveries of protected species in the area our May 19, 2015, letter can serve as our response to your recent assessment.

Mark

Mark A. Caldwell  
Deputy Field Supervisor  
U.S. Fish and Wildlife Service  
South Carolina Ecological Services  
176 Croghan Spur Road, Suite 200  
Charleston, SC 29407  
843-727-4707 ext 215  
843-300-0426 (direct line)  
843-727-4218 – facsimile

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**From:** Bret Davis [mailto:[BDavis@smeinc.com](mailto:BDavis@smeinc.com)]  
**Sent:** Thursday, January 11, 2018 12:34 PM  
**To:** [charleston\\_regulatory@fws.gov](mailto:charleston_regulatory@fws.gov)  
**Subject:** 64-66 Dereef Court PSA

Please find the attached PSA for a property located in Charleston County. The property is being assessed to facilitate the transfer of previously appropriated USDA funds for the purpose of creating a city park. While we are aware that USFWS has a letter that satisfies the requirement for sites without any species habitat, the City of Charleston requires an official letter specific to this site. If you have any questions please don't hesitate to contact me.

Sincerely  
Bret Davis

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**Bret K. Davis, P.G.**

Project Geologist



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## United States Department of the Interior

### FISH AND WILDLIFE SERVICE

176 Croghan Spur Road, Suite 200  
Charleston, South Carolina 29407



May 19, 2015

Ms. Gwenevere P. Smith  
Chief, Recreation Programs Branch  
National Park Service  
Southeast Regional Office  
Atlanta Federal Center, 1924 Building  
100 Alabama Street, SW.  
Atlanta, Georgia 30303

Re: Department of the Interior – National Park Service-City of Charleston-DeReef Park,  
Charleston, Charleston County, South Carolina  
FWS Log No. 2015-I-0358

Dear Ms. Smith:

The U.S. Fish and Wildlife Service (Service) has received your May 11, 2015, letter fulfilling the National Park Service's requirement under the National Environmental Policy Act (NEPA) for a Federal undertaking and to request our response on the protected species assessment for DeReef Park located on Morris Street in Charleston, Charleston County, South Carolina. DeReef Park is a city park partially being developed for single and multi-family residential homes. The site is located in a heavily developed urban area that has experienced residential and commercial development since the early 1800's. The site has been altered by current and past human activities.

The City of Charleston received two Land and Water Conservation Fund grants in 1981 and 1991 to assist with the acquisition and development of land for a park on Morris Street known as DeReef Park. A portion of the park was sold to a developer in January 2008. In December 2014, the United States District Court granted the motion for voluntary remand to reconsider the November 2008 approval of the after-the fact conversion of DeReef Park. The National Park Service was given a deadline of April 30, 2015, (but has been allowed until July 30, 2015) to reopen the administrative record and ensure the requirements of the NEPA and National Historic Preservation Act will be adequately met.


As noted in our conference call on February 24, 2015, on this matter, it is the Service's policy that we do not generally enter into section 7 consultation pursuant to the Endangered Species Act (ESA) when applicants are seeking "after-the-fact" authorization for projects that have already been completed or when impacts may have already occurred. Such a practice does not promote the conservation of listed species and critical habitat, an obligation for both the action agency and the Service under the ESA.

Further, the Service's policy is fully supported by the ESA and its implementing regulations. Both the ESA and the regulations are based on an underlying assumption that consultation will occur prior to any action being taken. Section 7(a)(2) of the ESA states that each Federal agency shall, in consultation with the Secretary, *insure* that any action authorized, funded, or carried out by such agency is *not likely to jeopardize* the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat (*See* 16 United States Code 1536(a)(2) (emphasis added)). Title 50 Code of Federal Regulations (CFR) 402.02 defines "jeopardize the continued existence of" as "to engage in an action that reasonably *would be expected*, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of the species in the wild by reducing the reproduction, numbers, or distribution of that species" (*See* 50 CFR 402.02 (emphasis added)). In the Service's opinion, the word "*insure*" and the phrases "*not likely to jeopardize*" and "*would be expected*" clearly contemplate consultation on a proposed action and not an action that has already been completed. The protections of the ESA insure against jeopardy. If the ESA and its implementing regulations contemplated after-the-fact consultation, there would be no need for the Service to consider and recommend reasonable and prudent alternatives in order to avoid the *likelihood* of jeopardy or reasonable and prudent measures to minimize the amount or extent of *anticipated* incidental take.

When a project has been completed, as is the case with DeReef Park, it becomes part of the environmental baseline. The environmental baseline includes the past and present impacts of all Federal, State, or private actions and other human activities in an action area, the anticipated impacts of all proposed Federal projects in an action area that have already undergone formal or early section 7 consultation, and the impact of State or private actions that are contemporaneous with the consultation in process (*See* 50 CFR 402.02). The consultant for this project, S&ME, Inc., conducted the protected species assessment on March 20, 2015. They stated, "Based on a review of historic aerial photographs, photographs of DeReef Park, and the location of DeReef Park in a heavily developed urban area that has experienced constant residential and commercial development since the early 1800s, it is our opinion that the site likely did not formerly contain any significant and unique habitats that provided habitat suitable for the federally listed threatened or endangered species discussed above in the recent past." Inasmuch as S&ME, Inc. has not identified any new effects associated with DeReef Park, the existing environmental baseline remains unchanged, and there are no new effects warranting ESA consultation. In addition, the protected species assessment provided to the Service by the applicant concluded that there are no impacts to the protected Federal species listed for Charleston County at DeReef Park. Upon review of the submitted project information and in comparison to our species and habitat database based on its current state, there are no known occurrences of any threatened or endangered species within the project area.

To politely reiterate, it is the Service's policy that we do not enter into section 7 consultation for completed actions. We hope the above information is helpful. If you need further assistance, please contact Mr. Tom McCoy at (843) 727-4707 ext. 227, and reference FWS Log No. 2015-I-0358.

Sincerely,

  
for Thomas D. McCoy  
Field Supervisor

/TDM